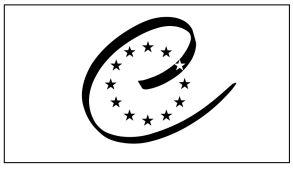

EXPRESSION OF CONSENT BY STATES TO BE BOUND BY A TREATY

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Foreword

Treaty-making constitutes the very basis of the international legal order and influences international relations. It channels the expression by states of consent to be bound and defines the commitments they enter into. However, the national procedures by which states express their consent to be bound vary considerably, depending on constitutional, legal and political conditions which reflect the history of each country.

The following report, drawn up under the aegis of the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, encompasses the practice of forty member States of this Organisation and a number of Observer states. It provides comprehensive and up-to-date information about these states' means of expressing consent to be bound by a treaty.

Furthermore, the analysis commissioned by the CAHDI from the British Institute of International and Comparative Law casts fresh light on this matter by inferring interesting considerations from the diversity of national procedures.

This report illustrates once again the key role of the CAHDI in the intergovernmental structures of the Council of Europe as the only forum where the legal advisers of the forty-three member states and a significant number of Observer states and international organisations can exchange and possibly co-ordinate their views on issues of public international law.

With this report, the Council of Europe wishes to pursue its practical contribution to the development of international law, facilitating the mutual understanding of its member States and thus, helping to build a stable and peaceful international community.

Walter Schwimmer
Secretary General of the Council of Europe

Introduction

In 1986 the Committee of Experts on Public International Law (CJ-DI) of the Council of Europe, predecessor of the Committee of Legal Advisers on Public International Law (CAHDI), operating under the aegis of the European Committee on Legal Co-operation (CDCJ), prepared a report on the means by which states consent to be bound by a treaty and national procedures relating thereto.

This report included contributions by nineteen member states of the Council of Europe and three Observer states of the committee. It was published by the Council of Europe in 1987 and since then has been of great use to researchers, scholars and governmental delegations.

Thirteen years after its publication, national procedures of some member states have changed considerably and the membership of the Council of Europe has increased almost twofold. Therefore, the CAHDI decided at its 17th meeting (Vienna, 8-9 March 1999) to undertake the preparation of a new report with up-to-date information about the means by which the member states of the Council of Europe express their consent to be bound by a treaty.

On the basis of a questionnaire adopted by the CAHDI, forty member states of the Council of Europe provided contributions regarding their national situation. These are Albania, Andorra, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, *"the former Yugoslav Republic of Macedonia"*, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. In addition, five Observer states of the CAHDI also provided contributions, namely: Canada, Israel, Japan, Mexico and Bosnia and Herzegovina.

On the basis of the information gathered, at its 19th meeting (Berlin, 13-14 March 2000) the CAHDI commissioned the preparation of an analytical report to the British Institute of International and Comparative Law.

This analytical report appears in Part I of this publication and the national contributions in Part II. The publication is completed with various documentary appendices including the questionnaire, which served as a basis for the preparation of the country reports, the Vienna Convention on the Law of Treaties and the state of signatures and ratification of this convention.

This report therefore constitutes a comprehensive source of information on how states approach treaty-making and covers every step and aspect of the process relating thereto.

Part I on the *Analytical report* deals in separate sections with: (I) Regulation of the treaty-making process; (II) The National regulation of treaty-making at international level; (III) The domestic legal processes governing the conclusion of treaties; (IV) Reservations and declarations to international treaties; (V) Provisional application; and (VI) The place of treaties in domestic law.

This analysis of the information gathered by the CAHDI is followed by an overall conclusion summarising the main findings.

It should be noted that the views expressed in this part of the publication are those of the authors and do not necessarily reflect the position of individual states or of the CAHDI as a whole with regard to the procedures, facts and situations referred to therein.

Part II on *Country reports,* includes the contributions provided by states and covers thoroughly the national procedures relating to the expression of consent to be bound by a treaty, including the authorities vested with the treaty-making power and competent to authorise negotiations, and the procedures relating thereto. They describe in detail the applicable national procedures, including the distinction between signature, subject or not to ratification, acceptance and approval, the cases to which these modalities apply and the steps leading to the decision to bind the state. They further deal with reservations to international treaties and objections thereto, and conclude with the various aspects relating to the incorporation of treaties in domestic law, the legal status of such treaties therein and the possibility of provisional application before its entry into force.

It should be noted that the contributions provided by delegations represent the official position of their countries and are therefore a precious source of information.

The CAHDI and the Secretariat of the Council of Europe wish to express their gratitude to the British Institute for International and Comparative Law and to all those involved in the preparation of the country reports for their co-operation in carrying out this valuable work.

The present publication follows that of the book *State practice regarding state succession and issues of recognition* which was prepared also under the aegis of the CAHDI, on the basis of the Council of Europe Pilot Project on state practice regarding state succession and issues of recognition, and represented a contribution of the Council of Europe to the United Nations Decade of International Law (1990-1999). Chapter 3 of this publication dealt with State succession in respect of treaties.

With this new publication, the CAHDI pursues its efforts to contribute to the progressive development of public international law by providing detailed and up-to-date information on how states approach treaty-making in the light of constitutional, legal and policy requirements they have to meet in conducting of their international relations.

We hope that it will be a useful tool for all those dealing in one way or another with treaty-making, whether practitioners or policy-makers, scholars, researchers or students of international law.

Reinhard Hilger
Chairman of the CAHDI

Guy De Vel
Director General of Legal Affairs
of the Council of Europe

Expression of consent by states to be bound by a treaty

PART I – ANALYTICAL REPORT*

Introduction

This study on Expression by states of consent to be bound by a treaty was commissioned by and prepared for the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe. It is based on information gathered from a questionnaire sent by the Committee to member states of the Council of Europe and Observer states. Forty-five states responded to the questionnaire, and this information has been supplemented by further research on the law and practice of the states surveyed.

The background to the present study is the vast expansion and development of international treaty-making during the course of the twentieth century. This has four interrelated but important characteristics.

First, in purely quantitative terms there are now very large numbers of treaties in existence and the conclusion of new treaties is a constant of international relations.[1]

Second, it might be observed that with the expansion of the role of government as well as the expansion of international interdependence, there has been a vast increase in the subjects on which treaties are now made. Thus treaties may now be concluded on practically the whole field of governmental activity ranging from the traditional topics of peace and security, to trade, economic regulation, taxation, the environment, human rights and so on.

Third, there has also been a corresponding increase in the variety of forms, functions and techniques of treaties. Thus treaty instruments may be used to secure political alliances, to set out the terms of a contract, to codify existing legal rules or to develop new law, or to establish the constitutions of international organisations or even new legal orders.[2] Similarly the techniques adopted range from simple exchanges of letters,[3] through to major multilateral conventions. Even in respect of the latter the technical possibilities span a spectrum between the adoption of a modern framework convention which may set in motion a process by which successive layers of international law may be made, to the adoption of a uniform law which may seek to regulate in precise terms a particular aspect of private law for incorporation into national law.

Fourth, although treaty-making is primarily conducted between states, modern developments in treaty-making also reflect the structural changes in international law. Not only does international law seek to regulate the relations between states but increasingly seeks to create rights and obligations for a wider range of persons including not only other "public" actors such as international organisations, but also "private" persons both natural and juridical.

It is the combination of these factors, which lends the current study of treaty-making and its regulation at both the international and national levels, a pressing relevance. The expanding scope of international law, and, in particular, of treaties, which can now penetrate more widely and deeply into areas which were previously the preserve of national law, requires that attention should be focused on the law-making process itself. In particular consideration

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* The analytical report was prepared by Dr Monika Lueke and Chanaka Wickremasinghe, researchers at the British Institute of International and Comparative Law.

[1] For example in recent years the United Kingdom has entered into more than 100 treaties per year, an average of two per week throughout a year (see D.H.Anderson "The role of the international lawyer in the negotiation of treaties", in C. Wickremasinghe (ed.) *The International Lawyer as Practitioner*, BIICL, London, 2000 p.26.

[2] As is done for example by the treaties establishing European Communities.

[3] Though even less formal methods of treaty-making can be imagined - see *Qatar v. Bahrain (Jurisdiction and Admissibility)* 1995 ICJ Rep. 5. For further discussion see J. Klabbers *The Concept of Treaty in International Law*, Kluwer, The Hague, 1996.

must be given to how the values protected in the domestic law-making process are also protected in the international law-making process.

The international process of treaty-making has its roots in an era when treaties were essentially agreements made between personal sovereigns in the conduct of their external relations. It has however evolved over time and many of the institutions of the process, for example the grant of full powers or the requirement of ratification following signature have taken on new and different meanings in an era of democratic government. However, even so, at the international level treaty-making is still largely an activity led by the executive, and the international processes of negotiation and the expression of consent to be bound are often seen as part of the conduct of foreign policy. Indeed it would be hard to imagine how under the current state-based international system this would not be so.

However with the development of democratic forms of government - and all of the states considered here are constitutionally democracies - national legislatures have increasingly sought to exert some control or at least require greater accountability over the conduct of foreign policy by the executive. Further, in relation to treaty-making, questions may arise which concern the separation of powers between the executive and the legislature. Thus where, for example, the executive seeks to make treaties affecting the legal situation of individuals within the state, it will require some form of consent from the legislature to the change in the national law.

Alongside the international law rules on treaty-making (as contained in Part II of the 1969 United Nations Vienna Convention on the Law of Treaties and in customary international law) an equally important body of law exists at the national level which governs the conduct of each state in relation to treaty-making. First, it will allocate powers to represent the state at the international level in the treaty-making process, to the appropriate state organs. Second, it will establish processes at the national level requiring an appropriate level of information, consultation or even prior consent, between the organs of state or even the electorate itself, for the valid exercise of treaty-making powers. Finally, it will also determine the place that treaties, to which the state has duly given its consent, will occupy in the national legal system.

For each of the states under consideration it is necessary to balance the need for efficiency, and indeed efficacy, in the international treaty-making process, so that it will produce clear and reliable results within a reasonable period of time, against the need for democratic control and the accountability of those exercising public powers. Where the exercise of those public powers affects the legal position of individuals within the jurisdiction of the state, then clearly there is a need for the application of safeguards, which are similar, or at least equivalent, to those, which ensure democratic control of law-making at the domestic level.

The Report is therefore made up of six main sections. Section I will survey the process of treaty-making in international law. Section II considers which state organs are empowered by domestic law to conduct the negotiations and issue the declaration of consent to be bound on the international level. In section III the requirements of domestic law for the lawful conclusion of international agreements are examined. In particular this section considers the extent of the role of the executive in treaty-making, that is the head of state or the government. Subsequently, the role of the legislature is examined, including the degree to which treaty-making has been integrated into the process of domestic law-making, or whether other forms of parliamentary approval, or even sanction by the electorate, are considered appropriate. The involvement of subsidiary entities of states is also discussed. In sections IV and V respectively, domestic procedures in relation to reservations and provisional application are considered. Finally Section VI relates to the implementation of international agreements and their role in domestic law.

Section I - Regulation of the treaty-making process

Despite the fact that the treaty is used in connection with such a broad array of transactions and fulfils many functions within international society, there exists in international law only a single category of legally binding instrument governed generically by the law of treaties. The Vienna Convention on the Law of Treaties, which sought to codify and in some respects develop international law on the topic, thus defines the treaty in very broad terms as "an international agreement concluded between states in written form and governed by international law". The substantive rules of the Vienna Convention largely provide a *lex generalis* for all such instruments (although in relation to many of its provisions states are allowed the freedom to determine a *lex specialis* applicable to particular instruments).

Part II of the Vienna Convention then sets down a number of general rules in relation to the conclusion of treaties and the expression by states of their consent to be bound. Perhaps unsurprisingly these are primarily concerned with ensuring clarity and efficiency in the treaty-making process at the international level, whereas more substantial regulation of the exercise of treaty-making powers is left largely to national law.

1. The negotiating process

a. Capacity

The Vienna Convention on the Law of Treaties confirms the capacity of all states to conclude treaties, but goes no further than this re-statement of the pre-existing customary international law. This certainly does not exclude the capacity of other subjects of international law to conclude treaties, but those agreements are not governed by the 1969 Vienna Convention as such.[4] Further, as will be discussed below, the fact that most international treaties are negotiated between states does not prevent relevant systems of national law from imposing their own rules as to, for example, the need for the consent, or at least consultation, of the constituent units of a federal state, prior to that state giving its consent to be bound by the terms of the treaty.

It might also be observed at this point that for the purposes of international law there is little essential difference between treaties concluded between states and treaties concluded between governments. Provided that an agreement is governed by international law, it will be a treaty, which engages the responsibility of the state for as long as it remains valid and will not cease to do so merely by reason of a change of government.

b. Authority to represent the state

In the rules on full powers in Article 7, the Vienna Convention establishes a framework for establishing the capacity of persons representing states in the conclusion of treaties. The purpose of full powers in modern practice is that they are the means by which the respective state representatives can ensure that they are dealing with duly authorised representatives of other states, and that thus their dealings with each other will not later prove ineffective because of lack of authority. At the international level this requirement, though important, is largely of a formal nature, whereas regulation of the grant of full powers is governed mainly by national law and/or practice.

Full powers are defined in the convention as being "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing consent to be bound by a treaty, or for accomplishing any other act with respect to a treaty".[5] Practice suggests that what is required is clarity in the appointment of the person(s), the task(s) he is to perform, and the signature of either the head of state, the head of government or the

[4] See Article 3 of the 1969 Vienna Convention. Treaties to which international organisations are parties will instead be subject to customary international law and, where applicable, to the 1986 Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations.
[5] Article 2 (1)(c) of the Vienna Convention.

minister for foreign affairs.[6] This latter requirement fulfils a dual role by providing the necessary safeguards at the international level, and at the domestic level it also ensures some means of accountability as in democracies, at least, it provides a clear line of responsibility along which the executive may be held to account politically.

The general rule is that full powers will have to be produced by the representative of a State who proposes to carry out one of the said activities relating to the conclusion of treaties or the expression of the State's consent to be bound, unless the intention of the States concerned to dispense with the full-powers requirement (which may be derived from the practice of those States or other relevant circumstances) can be established. It seems that States will frequently agree to dispense with the full-powers requirement in relation to bilateral treaties and treaties in simplified form.[7]

The second paragraph of Article 7 contains exceptions from the general rule for three categories of case in which a person "is considered in international law as representing his State without having to produce an instrument of full powers".[8] The first category of exceptions are the head of state, the head of government, and the minister for foreign affairs who are clearly considered by international law to have authority to represent their state. Since the grant of full powers is recognised by international law to be within their competence it would make little sense for them to be required to grant full powers to themselves.

The second category of case in which there is no requirement that the representative have full powers is in relation to heads of diplomatic missions. However, the exception operates only so as to lift the full-powers requirement in respect of the negotiation and adoption of a treaty text with the country to which he is accredited. International law recognises that the functions of a diplomatic mission include *inter alia* representing the sending State, negotiating and promoting friendly relations with the receiving State.[9] The credentials of the head of such a mission to carry out such functions will already have been presented to and accepted by the receiving State.[10] However, this exception from the full-powers requirement is limited only to the point of adoption of a text. An ambassador must therefore be granted full powers if he is to sign or express the consent of his State to be bound in relation to such a treaty, unless the States Parties have decided to dispense with the full-powers requirement.

The final category of case in which full powers are not required to represent the State is in relation to persons who are accredited as States' representatives to international conferences or international organisations, but limited to the negotiation and adoption of a text within that conference/international organisation. Again, credentials of such persons to represent the State will be presented to the relevant conference/organisation and thus there is no need for an additional grant of full powers for the purpose of the adoption of a text. Nevertheless, such representatives will require full powers in order to sign a treaty (whether in simplified form or not) or to express the consent of their State to be bound by it.

The provisions of Article 7 therefore establish which agents of the State are competent at the international level to represent States, and provide a relatively straightforward system by which those involved in the conclusion of treaties can be assured that they are dealing with duly authorised representatives of other States. Beyond this it is left to the internal law of each State to devise its own procedures for the grant of full powers, and to determine its own systems of co-ordination and accountability between its representatives for the purposes of concluding treaties and other instruments of government. It might therefore be asked what

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[6] See Aust, A., *Modern Treaty Law and Practice*, Cambridge University Press, Cambridge, 2000, pp.62-63.
[7] *Ibid.* at p.59-60.
[8] ILC Commentary, 1966 Yearbook of the International Law Commission, Vol. II, p. 193.
[9] Article 3, Vienna Convention on Diplomatic Relations 1961.
[10] Article 4, Vienna Convention on Diplomatic Relations 1961.

effect a breach of such internal laws has on the assumption of obligations by the State at the international level.

In this respect Article 46 of the Vienna Convention is important as it provides that a State may not invoke the fact that its consent to be bound has been expressed in violation of its internal law regarding the competence to conclude treaties, as invalidating its consent, unless the violation was "manifest" and "concerned a rule of its internal law of fundamental importance". The commentary of the International Law Commission (ILC) on this provision makes clear that it seeks to combine two policy considerations: first, to recognise the freedom of each State to determine, by means of its own law, the organs and procedures by which its will might be formed and expressed; and second, to ensure that the security of treaties should not be undermined by the danger of complex and uncertain limitations on treaty-making powers under national law.[11] The provision leans in favour of the second consideration, as it is only in exceptional circumstances that a violation of internal law will invalidate the consent of the State duly expressed at the international level.[12] Thus, as Sinclair points out for those persons who are exempt from the requirement of full powers by virtue of their office, under Article 7(2), there appears to be an incontestable presumption that they are entitled to perform the stated acts at the international level, irrespective of whether or not they are empowered to do so as a matter of internal law. [13]

Finally, if a person does not have authority to represent his State in accordance with Article 7, any act he[14] performs in relation to the conclusion of a treaty will be considered to have no legal effect at the international level, unless the State confirms it subsequently.[15]

c. Adoption and authentication of the text

Despite the centrality of the negotiating phase to the treaty-making process, it is regulated by few general rules of international law. This absence of international regulation is often mirrored at the national level, with most countries vesting wide discretionary powers as to the conduct of negotiations in the executive arm of government (see section II.2).

The Vienna Convention does however contain rules on the adoption and authentication of texts. These provisions are intended to ensure the smooth running of the negotiating phase at the international level, whilst also allowing the negotiating States some flexibility in the procedures they adopt, and avoiding more intrusive regulation. Adoption of the text occurs as the negotiating States reach agreement on the wording of the final text, and is quite distinct from their agreement to be bound by the text. Article 9 (1) contains the basic rule of unanimity for the adoption of a text. Bilateral and other treaties which are drawn up between a limited number of States will thus require unanimous agreement before a text can be adopted.

As an exception to the unanimity rule, Article 9 (2) provides that the adoption of a treaty text at an international conference shall take place by the vote of two-thirds of the States present and voting, unless by the same majority they decide to apply a different rule. The term "international conference" is not defined in the convention, but it would seem to include both

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[11] See 1966 YBILC Vol.II at pp.240-242

[12] The ILC's commentary finds that the negative formulation of this article makes clear the exceptional nature of this proviso. Paragraph 2 of Article 46 also defines the requirement that the violation of internal law be "manifest", as being "objectively evident to any State conducting itself … in accordance with normal practice and in good faith".

[13] See Sinclair, I., *The Vienna Convention on the Law of Treaties* (2nd ed., Manchester University Press, Manchester, 1984), p. 32.
In a similar vein it might also be noted here that Article 47 of the Vienna Convention provides that where the authority of a representative to express his State's consent to be bound has been made subject to specific restriction, failure by the representative to observe the restriction cannot be invoked by the state to invalidate its consent so expressed, unless the other negotiating states had notice of the restriction prior to the his expression of consent.

[14] Or she. The subsequent use of the masculine form shall include female persons.

[15] Article 8 of the Vienna Convention on the Law of Treaties.

major international conferences (such as those convened for the purposes of negotiating a major codification treaty) as well as smaller regional conferences. The practice of states varies between conferences,[16] and whilst the two-thirds majority voting rule may be useful as a default rule, Aust suggests that in practice it is increasingly common for States to seek consensus as far as possible as the basis for decision-making.[17]

The provisions of the Vienna Convention on the authentication of a text (Article 10) are of considerable practical importance, in so far as they lay down a procedure for establishing an authentic and definitive text, which is of course essential before states can assess the precise contents of a treaty. Authentication may be done by any procedure which the parties agree, but in the absence of specific agreement on this, it may be done by the signature, signature *ad referendum* or initialling by the state representatives of the treaty text or the final act of a conference which incorporates the text.

2. Consent to be bound

Before a treaty can give rise to rights or obligations on the part of a state, that state must express its consent to be bound by the treaty. Unless a state consents to be bound by a treaty, the general rule is that a treaty cannot create rights and duties for that State.[18] The expression of consent to be bound by a treaty can take various forms, the most common of which are the subject of Articles 11-17 of the Vienna Convention on the Law of Treaties. The convention provides that consent to be bound may be expressed by signature, exchange of instruments, ratification, acceptance, approval or accession or any other means if so agreed,[19] and then sets out the circumstances in which the different methods are appropriate. In relation to the regulation of treaty-making power under national or constitutional law, significantly different procedures and different state organs may be involved, according to the different forms in which the consent of the state to be bound is expressed.

a. Signature

Signature of the text of a treaty may have different legal significance according to the circumstances in which it is performed. Signature or initialling may be done at the adoption and authentication of the text of a treaty, in which case in the absence of a contrary intention by the parties, such signature or initialling will not in itself constitute the consent of the State to be bound. Signature may be expressly subject to ratification or subject to acceptance or approval. In such cases the state will not become bound by the treaty on signature, but will be under an obligation not to defeat the object and purpose of the treaty, until such time as it makes clear its intention not to become party to the treaty[20.]

However Article 12 of the Vienna Convention deals only with the circumstances in which signature is the expression of the definitive consent of a state to be bound. It provides that signature shall have this effect (a) where the treaty so provides; or (b) where the parties have otherwise agreed that this should be so; or (c) that the intention of the state that this should be so appears from the full powers of its representative or was expressed during the negotiation. Moreover initialling of the text can constitute signature where it can be established that the negotiating states have so agreed. In practice where consent to be bound is to be expressed by signature it will usually be specified or implicit from the terms of the treaty itself.

The expression of consent to be bound by signature is increasingly common especially with regard to bilateral treaties and multilateral treaties with relatively few parties. It is clearly a

[16] Sinclair, *op cit.* at pp.34-39
[17] Aust *op. cit.* at pp. 67-70
[18] Article 34 of the Vienna Convention. It should of course be borne in mind that the expression of consent to be bound will not automatically bring a treaty into force for the consenting state. The treaty itself will usually contain provisions on its entry into force.
[19] Article 11 of the Vienna Convention.
[20] Article 18 of the Vienna Convention.

simpler process than ratification, and in many countries it avoids the need to seek Parliamentary approval, which is a relatively common constitutional requirement prior to ratification of a treaty. Therefore it may be that the practice of expressing consent to be bound in this simplified form, whilst promoting speed and efficiency in treaty relations, does so at the expense of some transparency and opportunity for debate at the national level. In practice States will usually adopt more formal procedures in relation to treaties of high political importance or which contain broad law-making provisions.

Even where signature is the chosen means of the expression of consent to be bound, States may postpone the entry into force of its obligations under the treaty by signing *ad referendum*, that is by signing subject to subsequent confirmation. When that confirmation is forthcoming, the signature will become effective as of the date of signature rather than the date of confirmation, unless the parties agree otherwise.[21]

b. Exchange of instruments

An exchange of instruments can constitute the consent of the parties to be bound by a treaty, where this is provided in the terms of the treaty or if it is otherwise established that the States have agreed that an exchange should have this effect.[22] This will usually be done by means of an exchange of diplomatic notes or letters. Aust suggests that about one- third of treaties registered with the United Nations each year take this form.[23] Where the parties so provide, the entry into force of such agreements may be postponed pending confirmation by each of the parties of compliance with its own constitutional requirements.

c. Ratification

The term “ratification” can be used in different senses for the purposes of international law and national or constitutional law. In international law the Vienna Convention defines ratification along with “acceptance”, “approval” and “accession” as “in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty”. It might be noted that in national law ratification may be used to denote a requirement that the approval of the legislature must be obtained or some similar internal process must be complied with, before the State can validly express its consent to be bound at the international level. In order to avoid confusion, in this report the term “ratification” will be used to denote the international expression of consent to be bound in accordance with Vienna Convention.

In essence ratification is the formal act of an appropriate State organ by which the State expresses its consent to be bound by a treaty following its approval of the text. In most cases a treaty that is subject to ratification, will have been signed by the State representative on the adoption and authentication of the text. The text will then have been submitted to the government for examination and, where necessary, approval in accordance with national constitutional law and practice. It is only once such approval is obtained that the international act of ratification will follow.

In an earlier era, ratification was intended as confirmation by the sovereign that his plenipotentiary who had negotiated and signed a treaty had in fact acted within the scope of his full powers. It was thus a formal process and there was an obligation on the sovereign to ratify, unless the plenipotentiary had exceeded his powers.[24] However, since the end of the eighteenth century, with the development of more representative forms of government, the practice has evolved that in many States the requirement of ratification gives the legislature a degree of control over the exercise of treaty-making power by the executive.[25] The period

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[21] Gore-Booth (ed.), *Satow’s Guide to Diplomatic Practice*, (1st ed), Longman, London, 1979, p.270.
[22] Article 13 of the Vienna Convention.
[23] *op.cit.* p. 80.
[24] Blix “The Requirement of Ratification”, (1953) British Yearbook of International Law (BYIL) 352, esp at p.355; also Dissenting Opinion of Judge Moore in the *Mavromatis Concessions* case, PCIJ Ser.A No.2, 54 at p.57.
[25] Wildhaber notes how the traditional institution of ratification was first adapted so as to enable the legislature to exercise some control over the treaty-making process in the republican Constitutions of the US and France - see

of time which follows signature of a treaty subject to ratification, will not only allow the State an opportunity to appraise the final text and its implications, but will also supply an opportunity to obtain parliamentary approval or comply with any other requirements of national Constitutional law prior to ratification. It will also allow an opportunity for the introduction and adoption of any legislation which may be necessary for implementation of the treaty in national law. Thus, in modern treaty law although signature subject to ratification does have some legal effects,[26] States have a discretion to ratify. However, in practice, it is likely that governments will not refuse without good reason to ratify a treaty, which its representative has signed.

The provisions of the Vienna Convention are largely limited to the circumstances in which ratification will be required as the means of expression of consent to be bound. Under Article 14 (1) these are: (a) when the treaty so provides; (b) when it is otherwise established that the negotiating States so agreed; (c) the representative of the State has signed the treaty subject to ratification; (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of the representative or was expressed during the negotiations. In practice ratification will be required for many multilateral treaties and many of the more important bilateral treaties.

In practical terms ratification will be effected by means of an instrument of ratification in which the relevant treaty is clearly identified and by which the State confirms and ratifies the same and undertakes to be bound by its terms. International practice usually requires that the instrument should be signed by the head of state, the head of government or the minister for foreign affairs, or by a representative empowered to do so by virtue of full powers granted by one of the said authorities. However, as will be discussed below (section IV), national constitutional law will often have its own procedural requirements before an instrument can be validly ratified.

d. Acceptance and approval

Acceptance and approval are analogous processes to ratification, in that they are means whereby a State may express its consent to be bound by a treaty, following its signature subject to acceptance or approval respectively. These processes were developed in the post-1945 period to give governments the opportunity to review a text after signature, whilst at the same time avoiding potentially lengthy and uncertain constitutional procedures which might be required for ratification. Thus the ILC commentary suggests that on the international level acceptance (or approval) is more a difference in terminology than in method.[27]

Where a treaty is open to acceptance or approval without prior signature it is analogous to accession (see below).

e. Accession

Accession is the usual method by which a State, which has not taken part in the negotiations or signed a treaty, may subsequently consent to be bound by its terms. Article 15 of the Vienna Convention provides that a State may express its consent to be bound by means of accession where (a) the treaty so provides; or (b) it is otherwise established that the negotiating States agreed that the consent of that State may be expressed by means of accession; or (c) all of the parties have subsequently agreed that the consent of that State may be expressed by means of accession.

Treaty-Making Power and Constitution - An international and Comparative Study (1971), especially Chapter I "On the History of the 'democratization' of the Treaty-Making Power".

[26] See text relating to footnote 20.

[27] On the national level it might be noted that constitutional limitations on the powers of the executive to act alone in treaty-making, may arise in relation to the formal process of ratification, or in relation to the subject matter of the treaty itself (see section II). Use of acceptance or approval would overcome limitations arising only from the former. It might be noted that some formulations will state that the treaty is "subject to ratification, acceptance or approval".

3. Reservations

If a State, when entering into an international agreement, intends to exclude or modify the application of certain provisions of the treaty or wishes to ensure a certain interpretation of a provision, it will enter a reservation or make an interpretative declaration to such effect. The rules on reservations, as formulated in Articles 19 to 23 of the Vienna Convention on the Law of Treaties, are complex. Hence, the subject of reservations was referred to the International Law Commission for examination in 1993. Although the work of the ILC is far from being finished, in his preliminary conclusions[28] the Special Rapporteur has confirmed that the provisions of the Vienna Convention broadly reflect the current state of international law.

Reservations are permissible during signature, acceptance, approval, ratification or accession, depending on the method which the States have chosen for the expression of their consent to be bound.[29] Only if the treaty so allows, or the other parties to the treaty do not object, can reservations also be made at a later stage.[30] There are three situations in which reservations are impermissible: (a) reservations which are expressly prohibited; (b) reservations which do not fall within the provisions of a treaty which permits specified reservations and no other; and (c) reservations which are incompatible with the object and purpose of the treaty. In principle, impermissible reservations should have no legal effect.[31] Consequently, the provisions of the treaty in their entirety will be applicable to a party which has entered such a reservation, unless that State decides not to become a party at all.[32]

Provided the reservation is admissible, there are a number of factors which will determine whether the reservation is in fact capable of excluding the application of the relevant treaty provisions for the reserving State: if the treaty under consideration is a restricted multilateral treaty,[33] the reservation must not be objected to by any of the other parties; if the treaty is a constituent instrument to an international organisation, the reservation has to be accepted by the competent organ. In all other situations the reservation will mutually modify the provisions of the treaty to which the reservation relates among the reserving party and those parties who do not raise objections.

Where an objection is raised by a State to a lawful reservation entered by another State, the relevant treaty provisions will not be applied to the extent of the reservation as between the objecting and reserving States. Thus, the practical effects of objections may be limited, unless the objecting party indicates that the objection is meant to preclude the entry into force of the treaty between it and the reserving party. The latter is usually the case with regard to constituent instruments of international organisations or plurilateral treaties.

As objections do not give rise to new legal obligations, but solely block the efforts of another State to change the legal effect of a treaty unilaterally, they are considered generally to fall within the conduct of foreign policy. Consequently, objections may be made by the minister for foreign affairs in a relatively informal way.

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[28] UN Doc. A/52/10, paragraphs 44-157.

[29] See report of the Special Rapporteur to the ILC on reservations to treaties, http://www.un.org/law/ilc/reports/1998/chp.9.htm, para. 497, 540; ILC Draft Guidelines 2.3.1 on Reservations to Treaties, UN Doc A/CN. 4/508/Add. 4, para. 310; Border and Transborder Armed Actions Case, ICJ Rep. 1988, 85).

[30] See report of the ILC on reservations to treaties 2000, http://www.un.org/law/ilc/repor.PDF, para. 654.

[31] See the judgments of the European Court of Human Rights in *Belilos v. Switzerland*, Ser. A, vol.132 (1988); *Loizidou v. Turkey,* Ser. A, vol. 310 (1995). However, the issue is not undisputed, as can be seen from the reactions of the states to the reservations Guatemala made to Article 27 of the Vienna Convention on the Law of Treaties. The ILC itself, in the discussion of the topic of reservations, does not take a clear position as to the effect of reservations which are impermissible, see report of the ILC on the topic of "Reservations to treaties", Preliminary Conclusions, No. 10.

[32] See report of the ILC on the topic of "Reservations to treaties" (footnote 31).

[33] That is, a treaty between a limited number of states with a special interest in the outcome, sometimes referred to as plurilateral treaties.

When reservations are withdrawn, this must be done in writing, usually to the depository, who will notify the contracting states.[34] Unless a treaty provides otherwise, withdrawal can be done at any time.

Although the Vienna Convention does not separately address reservations and objections to multilateral and bilateral treaties, the legal consequences of reservations to bilateral agreements have important differences to those issued in a multilateral context. In fact, reservations to a bilateral treaty result in a treaty amendment in the proper sense. If the reservation is met with an objection by the other party there is an absence of mutual consent and hence, a binding treaty does not exist as between the parties.

Finally, it should be noted that it is sometimes difficult to distinguish reservations from declarations, which are by definition statements of a purely explanatory character. Declarations clarify a state's interpretation of a certain provision or set down its reasons for becoming a party. In contrast to reservations, interpretative declarations do not incur legally binding consequences, but suggest a preferred interpretation. Declaratory statements can be made on the occasion of ratification, approval, signature or accession to a particular treaty or at any other time thereafter.

4. Provisional application

As entry into force of multilateral agreements usually requires a minimum number of ratifications, a considerable amount of time may pass between adoption of the text and its entry into force. In situations where the number of ratifications has not reached the level required for entry into force, the States parties might nevertheless want to ensure the legal effect of a treaty by provisional application. Article 25 of the Vienna Convention on the Law of Treaties states that a special clause contained in a treaty will oblige States to apply an agreement provisionally before entry into force, provided that they have signed the agreement.[35]

Where a treaty does not contain a clause providing for its provisional application, a State party may still undertake commitments to apply it provisionally. For example, a State might vote for a resolution to that effect. However, provisional application is relatively uncommon as for many states it does not obviate the need for parliamentary consent or other domestic constitutional requirements. Thus, in some cases a more limited obligation may be adopted, as was the case in relation to the 1991 Protocol to the Antarctic Treaty on Environmental Protection, where the final act contained a clause in which the States undertook to apply Articles I-IV of the Protocol prior to its entry into force, "in accordance with their legal systems and to the extent practicable".

Unless the treaty contains a clause in respect of provisional application or a state otherwise expresses its support for provisional application, it will be under no obligation to apply the agreement before its entry into force. As at the international level the decision whether or not to apply a treaty provisionally is usually carried out in the course of the international process of treaty-making, it will be made by the state organs vested with treaty-making powers (see section II).

[34] Compare Articles 22 and 23 (4) of the Vienna Convention on the Law of Treaties.

[35] For example, Article 7 of the 1994 Agreement relating to the Implementation of Part XI of the UN Convention on the Law of the Sea 1982 provided for provisional application of the agreement if the agreement had not entered into force by 16 November 1994, (1994) ILM, p. 1313.

5. Implementation

International law requires States to observe international treaties, which are binding upon them. The Vienna Convention on the Law of Treaties codifies the legal principle *pacta sunt servanda* in Article 26. In this respect, international law imposes an obligation of result, rather than an obligation of means: States are generally free in the way they implement their treaty obligations. They might choose to integrate agreements into domestic law automatically. Alternatively States might require a domestic legislative or administrative act, which is either a purely formal precondition for the applicability of the treaty itself in domestic law or has the qualities of substantive law-making transforming the contents of the treaty into domestic law. States are also free to determine the ranking of treaties within the hierarchy of municipal sources.

If states fail to fulfil their international obligations, in principle, they cannot invoke their domestic law as an excuse,[36] and their international responsibility will be engaged.[37]

The increasing number of treaties which relate to the rights and duties of the individual may to some extent limit the discretion of States in relation to implementation. However, even in these cases the state's choice of means of implementation will not usually be entirely superseded by international obligations. Hence, international human rights treaties may restrict the choice of implementing measures, as they require the States Parties to create legally enforceable rights for individuals under their jurisdiction[38.]

In this respect mention should be made of the treaties establishing the European Communities. These treaties establish a legal order with truly supranational elements. Thus, some of the treaty provisions must be directly applied in the member states without the need for any national implementation. Furthermore, according to the community legal order such provisions must be given priority over the national law of the member states[39].

Section II - National regulation of treaty-making at the international level

This section examines the rules of the various national legal systems, which govern the competence of state organs to participate in the international treaty-making process, from the initiation of negotiations to the expression of the state's consent to be bound.

Not surprisingly international law does not provide an elaborate set of norms in this regard. The expression of a State's consent to be bound by an international treaty is an exercise of State authority in the field of foreign policy and thus, primarily, if not exclusively, to be decided by the State as part of its sovereign power. The question of which State organs should participate at different stages of the process is of little concern to international law, beyond ensuring that the representatives of the States involved in the negotiation are properly authorised and that each may thus rely upon the integrity of the process.

As external representation of states on the international plane is always vested in the executive, negotiation of international agreements is entrusted to executive organs. Negotiations were traditionally carried out by members of the diplomatic corps if not by the foreign minister or head of state in person. Nowadays the foreign minister will authorise state officials of his or other competent departments to carry out the negotiations. Only the most

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[36] In accordance with Article 27 of the Vienna Convention. Article 46 of the Vienna Convention sets an exception in this regard, in cases where the violation of internal provisions is "manifest and concerned a rule of its internal law of fundamental importance".

[37] Which are under the discussion in the ILC, 1996 ILC Draft Articles on State Responsibility, GAOR, 51st Sess., Supp. 10, p. 125.

[38] For example, Article 1 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950); Article 2 of the International Covenant on Civil and Political Rights.

[39] Case 6/64, *Costa v. ENEL* [1964] ECR 585; case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, 1134; case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* [1978] ECR 629.

important political treaties are negotiated by the minister in person or even by the head of state. In current practice the task of negotiating treaties is often shared between a team of state officials coming from the various departments which have an interest in the subject-matter, and not solely from the diplomatic corps.

The process of negotiation is not usually subjected to clear and detailed rules. It is frequently seen as constituting an integral part of foreign policy and is assigned to the ministry of foreign affairs, albeit with the possibility of delegation. Some powers in this respect might be conferred on other departments where the subject-matter of the treaty to be negotiated falls within their competence.

The successful outcome of negotiations is the adoption of the text of the agreement preceding signature and/or ratification. The declaration of consent to be bound is generally issued by the foreign minister or the head of state himself – at least if formal ratification is required. Executive agreements are usually concluded by the competent minister without authorisation by the foreign minister or head of state.

The extent to which domestic law provides detailed rules on treaty-making varies. In most States the constitution will contain provisions stating who is entitled to express the consent of the State to be bound at the international level. The forms which the expression of consent might take is generally not regulated, neither is the question of delegation, though in some cases these are dealt with by a constitutional usage.

1. Comparison of how states express their consent at the international level

The formal commitment to be bound is the point at which the international legal obligations of a state will crystallise. From the perspective of constitutional law, entering into international obligations is also an important step. Accordingly, nearly all written constitutions contain some provisions on the competence to enter into treaty relations**,** almost always where formal ratification is required, but often also in relation to other, less formal means of expression of consent. In some cases in which national constitutions refer only to ratification of treaties, this is interpreted as governing other means of expressing the State's consent to be bound, including accession, approval and sometimes signature as well.

While powers of formal ratification (including acceptance and approval) are generally vested in the head of state (the president or the monarch), signature of treaties is frequently left to members of the government, sometimes upon express or implicit authorisation by the head of state. Where less formal methods of treaty-making are adopted, this may be considered as part of the ordinary conduct of foreign policy, and so the constitutional formalities relating to "ratification" will not be applicable. In such cases the appropriate minister will have authority to enter into treaties in his own right, without specific authorisation.

Some constitutions restrict treaty-making power, in respect of treaties on particular types of subject-matter. If a State enters into an agreement in violation of such Constitutional limitation, its purported expression of consent is invalid from the point of view of constitutional law. By contrast, where the constitutional limitation is purely procedural, for example where a qualified parliamentary majority is required to approve a treaty, a violation will not necessarily invalidate the State's consent to be bound as a matter of national law. Furthermore, from the perspective of international law, consent in violation of a provision of national law will be invalid only where "that violation was manifest and concerned a rule of its internal law of fundamental importance".[40]

Turning to the arrangements within the various countries under consideration, one can identify groupings of States in which treaty-making powers are distributed between the relevant organs of State in broadly similar patterns. In some states the power to express consent to be bound by a treaty is wholly vested in the head of state. In other states the power to enter into treaty commitments is shared - important treaties may be concluded by

[40] Article 46 of the Vienna Convention on the Law of Treaties.

the head of state, whereas the government, represented by its head (prime minister or chancellor) or individual members, primarily the minister for foreign affairs, may also conclude certain agreements. Other States leave the whole of treaty-making to the government. Whilst in federal states treaty-making power is sometimes partly shared with the constituent units of the federation.

The constitutions of many States may in fact be something of a mixture of the above-mentioned models. For example, in monarchies, although treaty-making power is formally vested in the Crown as head of state, forming part of the royal prerogative, it is in reality entirely carried out by the government.

***a*. Consent to be bound expressed by the head of state**

Although the following constitutions contain provisions, which appear to grant exclusive powers to the head of state to conclude international treaties, that does not necessarily mean that he must sign all legally binding documents in person. In some states the head of state may authorise members of the government to act on his behalf. It is also quite common for democratic systems to require the countersignature of the head of government or the minister for foreign affairs, alongside that of the head of state. The requirement of countersignature by a member of the government serves to secure political accountability, particularly where the head of state cannot usually be held to political account by the parliament. Thus the requirement of countersignature may also serve to enable the parliament to extend a measure of indirect control over those agreements which do not formally require the parliamentary approval under the constitution (see section III).

Therefore although treaty-making power in *Belgium* is principally vested in the King under Article 167 (2) of the Constitution, he concludes treaties under the responsibility of the Federal Government. The Constitution also requires the countersignature of the Minister for Foreign Affairs to validate a signature or ratification. Whilst formal ratification of these treaties always has to be carried out by the King, he may authorise other persons to sign a treaty in his name. However, if persons other than the prime minister or the minister for foreign affairs are so authorised they must be granted full powers contained in a document signed by the king and countersigned by the minister for foreign affairs.

Under Article 36 (1) of the Constitution of *Greece*, treaty-making power is vested in the President. Like all acts of the President, those in the field of treaty-making, that is ratification of a treaty, require the countersignature of the competent minister, usually the Minister for Foreign Affairs (Article 35). Treaty-making power is restricted in the case of a treaty limiting the exercise of national sovereignty, as such a treaty may be concluded only if this is warranted by an important national interest, and it does not adversely affect human rights or the democratic basis of government (Article 28 (3)).

By virtue of Article 8 (1) of the Constitution in *Liechtenstein* treaty-making power is generally vested in the reigning Prince. However, instruments of accession or ratification have to be countersigned by the Head of Government or his Deputy. Similarly in *Luxembourg* treaty-making power is vested in the Grand Duke in accordance with Article 37 (1) of the Constitution, although Article 45 also requires that his acts must be countersigned by the minister technically responsible, often the Minister for Foreign Affairs.

In *Turkey* the President takes a leading role in treaty-making, as he enjoys general powers in this respect under Article 104 (b) of the Constitution. The Turkish reply to the questionnaire states that the President would exercise his power through a Decree of the Council of Ministers. It is thought that this relates to Article 105 of the Constitution stating that presidential decrees generally require the countersignature of the Prime Minister and the ministers concerned.

The position of the President with regard to the conclusion of treaties is also strong under the new Constitution of the Republic of *Finland*, since by virtue of Article 93, treaty-making power is conferred upon the head of state. Parliament can delegate treaty-making power to

the Government or to a single ministry. However, under Article 94 (3) the President or any duly delegated member of the Government is prohibited from entering into any international obligation, which might "endanger the democratic foundations of the Constitution".

Of all the countries under examination the *United States of America* is probably the country in which the position of the Head of state is most dominant with regard to the conclusion of international agreements. This is in keeping with the central position of the presidency within the executive. Under Article II, section 2(2) of the Constitution the power to conclude international treaties is essentially vested in the President. Delegation of treaty-making powers to other members of the Government occurs much less frequently than in many other States.

Amongst the group of eastern European or former Soviet Union States which have undergone considerable constitutional change throughout the last decade, *Estonia, Slovenia* and *the Slovak Republic,* as well as *Azerbaijan,* similarly provide that the President has authority to enter into international treaty obligations on behalf of the State: In *Estonia* the power of formal ratification lies with the President of the Republic, while signature may be undertaken by any member of the Government, an ambassador or a permanent representative duly authorised to do so by the Government.

Under *Slovenian* law all treaties have to be ratified by the President by virtue of Article 107 of the Constitution. As under Slovenian law signature subject to ratification, or formal accession, are the only possible means to enter into international agreements, treaty-making power in *Slovenia* is exclusively vested in the President.

In the *Slovak Republic* treaty-making power is conferred upon the President under Article 102 (a) of the Constitution. Thus the formal act of ratification must always be carried out by the President. In those cases where the Constitution does not require the approval of a treaty by the National Council of the Slovak Republic, the President may delegate treaty-making to the Government, or, with the consent of the Government as a whole, to individual members of the Government.

The situation in *Azerbaijan* is less clear. Article 109 (17) of the Constitution appears to vest treaty-making power in the President. However, treaties not subject to ratification do not have to be concluded by the President in person, as he may authorise the Government, usually represented by the Prime Minister or the Minister for Foreign Affairs, to do so.

b. Shared competence between the head of state and the government

In the majority of constitutional systems the power to enter into a formal commitment in international law is shared between different organs of the executive. Usually, important treaties between states are concluded by the head of state, whereas intergovernmental agreements may be entered into by a member of the government. In the latter type of agreement the government is either represented by its head (for example, the prime minister or the chancellor), by the minister for foreign affairs or other relevant ministers.

As a general rule the exclusive competence of government is limited to technical or other agreements, which do not affect major affairs of state. However, it should be noted that in some cases governmental competence may extend to treaties which affect individual rights.

The exact form of power sharing between government and the head of state varies between States. Similarities can be identified between *Germany, Austria, Italy, the Czech Republic* and perhaps also *Iceland* on the one hand and between *France, Portugal, Cyprus* and *Mexico* on the other. Whilst most of the former Communist countries of central and eastern Europe again take a different approach.

In *Germany*, constitutional law requires that formal ratification of treaties is always carried out by the President (Article 59 (1) Basic Law). Under Article 58, acts of ratification have to be countersigned by the Chancellor or the Minister for Foreign Affairs. If the agreement to be concluded does not require ratification or accession, and does not have to be submitted for

approval to the German Parliament under Article 59 (2), the Government may express consent to be bound by it. However, no treaty can be concluded if it violates the fundamental principles protected in Article 79 (3) of the German Basic Law, that is the core value of human dignity, the rule of law, the principle of democracy and the federal system.

The rules on treaty-making in *Austria* are similar to those contained in the German Basic Law. Under Article 65 of the constitution, the President is vested with treaty-making power. He may authorise the Federal Government or individual ministers to conclude agreements on his behalf. Article 67 requires all treaties concluded by the President, or on his behalf, to be countersigned by the Chancellor or the Minister for Foreign Affairs. Additionally, the Federal Government and individual ministers are empowered to conclude certain categories of treaties themselves in situations where the Austrian Constitution does not require Parliamentary approval. Thus, the Government is entitled to conclude intergovernmental agreements, by the competent minister acting in conjunction with the Foreign Minister; and may conclude interdepartmental agreements by the competent minister acting alone.

Treaty-making in *Italy* also resembles the German model. Under Article 87 (8) of the Italian Constitution the conclusion of international treaties is generally vested in the President. In most cases where the conclusion of a treaty has been proposed a minister, usually the Minister for Foreign Affairs, must also countersign the instrument of ratification. However, technical or administrative agreements may be concluded by the Minister for Foreign Affairs or any other minister competent with regard to the subject-matter of the agreement, unless the treaty itself requires formal ratification.

Although Article 63 of the Constitution of the *Czech Republic* principally vests treaty-making power in the President, he has delegated the power to negotiate and ratify treaties which do not require Parliamentary consent to the Government (Decision on the negotiation of international treaties of 28 April 1993, No. 144/1993). Furthermore, the President has authorised individual members of the Government to ratify treaties which fall within the field of competence of the appropriate ministry or government organ in question.

In *Iceland* the power to enter into binding obligations is, in practice, shared between the President (under Article 21 of the Constitution) and the Government. To some extent the system is similar to the German and Austrian model, though the position of the President is considerably weaker. Under Article 13 of the Constitution, the President does not exercise his functions in person, but, rather, through his ministers, and in the field of foreign policy through the Minister for Foreign Affairs. Only in cases in which the treaty in question requires formal ratification, will the instrument of ratification be signed by the President, but with the countersignature of the Minister for Foreign Affairs (in accordance with Article 19).

A different model of power-sharing between President and Government is adopted by *France*. If the treaty to be concluded requires ratification, the President has the power to express consent to be bound by it, under Article 52 of the constitution. International agreements that do not require ratification can be concluded by the Foreign Minister on behalf of the government. Unlike the German model, according to the French Constitution, the President's treaty-making powers are not conterminous with the requirement of parliamentary approval in domestic law, that is, the treaties and agreements which require parliamentary approval include all those treaties ratified by the President of the Republic and the agreements concluded by the Government which fall within the scope of Article 53 of the Constitution.

In addition to international treaties and agreements, it has been accepted in practice that individual ministers are entitled to enter upon agreements *(arrangements administratifs)* with their foreign counterparts in relation to technical or administrative matters within the scope of their department. Those agreements are not international agreements according to Article 55 of the French Constitution. A Circular of 30 May 1997 relating to the preparation and conclusion of international agreements sets the restrictive conditions under which it is possible to conclude administrative arrangements: "under particular circumstances, with a

view to completing or specifying an existing agreement, or to organise limited administrative co-operation".

Portugal adopts a similar approach to the French model of power-sharing between President and Government. Treaty-making power belongs in some measure to the President of the Republic through the ratification of conventions (Article 135 (b) of the agreements, according to Article 161 (i) of the Constitution. The Government is competent to approve agreements which do not contain matters reserved for the Parliament's approval.

Other countries which apply the distinction between those treaties which require formal ratification and those which do not, are *Cyprus* and *Mexico*. In *Cyprus* formal ratification is a matter for the President under Article 37 (c)(ii) of the Constitution. In all other situations, treaty-making power is vested in the Government (Article 54). In the *Mexican* reply to the questionnaire it is stated that treaty-making power as a whole is vested in the President, though Article 89 (X) of the Constitution makes clear that this relates only to agreements concluded in a solemn form, that is those requiring ratification or approval. Subsequent answers suggest that executive agreements in simplified form may be entered into without the involvement of the President.

Many central and eastern European countries and a considerable number of the States that have succeeded the former Soviet Union likewise incorporate a power-sharing concept, which divides treaty-making between the President and the Government. However, given the lack of information about the constitutional practice in those countries it is difficult to draw conclusions as to particular common features which may exist among them. It is not possible to determine whether the allocation of competence is organised as in the German or the French models just described.

With regard to *Albania* the reply indicates that under Article 92 (f) of the Constitution and in application of Article 3 of the Law No. 8371 of 9 July 1998, treaty-making power is vested in the Albanian President or alternatively, if the subject matter of the treaty so allows, in the Albanian Government.

Treaty-making power in *Croatia* is generally vested in the President (Article 132 of the Constitution in combination with Article 5 of the Croatian Law on Conclusion and Implementation of Treaties), who may authorise the Government to conclude particular agreement**s**. In addition, Article 5 (2) of the Treaty Law authorises the Government to conclude treaties, which fall within the domain of the economy, public services and the environment without the need to seek special authorisation from the President.

In *Georgia* treaty-making power is likewise shared between the President and central authorities of the Government of Georgia. Under Article 73 (1) of the Constitution as confirmed by Article 4 of the Law on International Treaties, treaty-making power with regard to interstate and intergovernmental treaties is vested in the President. Interdepartmental treaties are concluded by the Minister for Foreign Affairs.

In *Lithuania* treaty-making power is divided between the President of the Republic and the Government. Article 84 (2) of the Constitution states that the President shall sign international treaties of the Republic of Lithuania and submit them to Parliament for ratification. In accordance with Article 3 of the Law of the Republic of Lithuania on International Treaties, the power of initiative to conclude an international treaty belongs to the President of the Republic, the Prime Minister, the Minister for Foreign Affairs and the Government. If a treaty is concluded on behalf of the Government, it falls within the competence of the Government and it does not require parliamentary approval. Thus the Government enjoys a degree of exclusive treaty-making power.

Although Article 30.A of the Constitution of *Hungary* formally vests treaty-making power in the President**,** it is in fact shared. The Government may conclude treaties in its own name if formal ratification is not required and the contents and effects of the treaty to be concluded do not exceed the Constitutional competence of the Government (Article 35 (1) j)).

Under the Constitution of *"the former Yugoslav Republic of Macedonia"* treaty-making power is generally vested in the President (Article 119 (1)) except, in those situations in which the Law on Conclusion, Ratification and Implementation of International Agreements permits the Government to conclude treaties (Article 119 (2) of the Constitution in combination with Articles 3 (2), 4 and 16 of the Law on Conclusion, Ratification and Implementation of International Agreements).

Although the Constitution of *Poland* in Article 146 (4) (10) formally allocates treaty-making power to the Government, if a treaty has to be formally ratified the act of ratification must be carried out by the President in accordance with Article 133 (1)(i) of the Constitution. Where such Presidential ratification is required, the instrument of ratification must also be countersigned by the Prime Minister (Article 144 (2)).

In *Romania* the Constitution and the Law on the Conclusion of International Treaties (Law No. 4 of 11 January 1991) allocate treaty-making power to the President and to the Government (Article 91). While formal ratification can be carried out only by the President in person, other engagements may be entered into by the Prime Minister, the Minister for Foreign Affairs or other members of the Government authorised by the President. Treaties that do not require formal ratification and fall within the competence of the Government may be concluded by the Government without prior authorisation of the President (Article 4 of the Law on the Conclusion of International Treaties).

In the *Russian Federation* treaty-making power is mainly vested in the President (Article 86 of the Constitution). If a treaty is concluded in the name of the Government, or if the subject-matter of a treaty otherwise lies within the competence of the Government, and the terms of that treaty do not require formal ratification, Article 15 of the Law on International Treaties of the Russian Federation allocates treaty-making power to the Government (compare Article 114 (1)(e) of the Constitution). Article 79 of the Russian Constitution contains a substantial**,** general limitation on treaty-making power: conclusion of international treaties is permitted only in so far as it does not restrict human or civil rights and liberties and does not contravene the fundamental principles of the constitutional system of the Russian Federation.

Treaty-making power in the *Ukraine* is divided between the President (Article 106 (3) of the Constitution), the Government and other executive authorities. While formal ratification of treaties must be carried out by the President, the Government may conclude treaties within its competence by other means, as may the central executive authorities.

Examining the arrangements in the central and eastern European States it may be possible to outline one common feature. Although the texts of the constitutions explicitly vest treaty-making power in the President, the reality is that with regard to international agreements which do not require formal ratification, the Government frequently enjoys treaty-making competence. An exception to this would be the Russian Federation where the President enjoys very extensive powers.

In contrast to all the other States the situation in *Andorra* is quite exceptional. With regard to those treaties listed in Article 64 of the Constitution as requiring parliamentary approval, treaty-making power is jointly exercised by the Heads of State, that is the French President and the Bishop of Urgell, acting jointly as *Co-princes* (Article 45 (1)(h)) in combination with Article 43). However, if an agreement to be concluded has been approved by a resolution of the *Tribunal Constitutionnel* (after submission of a reasoned application by at least one of the *Co-princes,* Article 45 (2)), or if the treaty has been signed by the Government (Article 45 (2)), the consent of one of the *Co-princes* is sufficient. With regard to those treaties, which are listed in section 9 of the Act Regulating the Activity of the State in respect of Treaties as not requiring Parliamentary Approval, the *Co-princes*, the Head of Government and the Minister for Foreign Affairs, each have full authority to give their consent on Andorra's behalf at the international level.

In summary therefore, among those states which divide competence in the field of treaty-making between the head of state and the government, the German, Austrian, Italian, Czech and partly also the Icelandic, conception of power-sharing is usually based on the constitutional requirement of parliamentary approval. In *Portugal*, *Cyprus* and *Mexico* formal ratification or approval must always be carried out by the President, whilst other less formal acts can be undertaken by the government. Also *France* makes a formal distinction between treaties (*traités*) which have to be ratified by the President and agreements (*accords*) which only the Government can conclude. In general the constitutions in the eastern European countries explicitly vest treaty-making power in the president, though in reality the government is authorised to conclude less important agreements.

c. Treaty-making as part of royal prerogative

In many monarchies treaty-making power is part of the royal prerogative, and as such formally vested in the Crown. In practice, however, the Crown will follow the advice of its ministers.

The concept of the royal prerogative plays a major role in the Westminster tradition. Thus, one of the main examples of treaty-making as part of the Royal Prerogative is the *United Kingdom*. Although treaty-making power is formally vested in the Crown, in practice it is the Government, which exercises this power. Hence, the processes of formal ratification, acceptance and accession are frequently undertaken by the Prime Minister or the Secretary of State for Foreign and Commonwealth Affairs acting on behalf of the Crown.

A related system is that of *Canada*. Treaty-making, being part of the Royal Prerogative, is exercised by the Governor-General in Council, that is the Governor-General of Canada acting on the advice of Privy Councillors, who are Ministers of the Government. In practice, the Governor-General authorises the Minister for Foreign Affairs by Order-in-Council to execute the instrument of ratification or any other formal expression of consent to be bound if so required. On the other hand signature of a treaty may be done by any duly authorised representative of the Government.

Similarly in *Australia* treaty-making power is vested in the Crown and is exercised by the Governor-General in Council, that is the Governor-General acting on the advice of the Federal Executive Council. The Federal Executive Council is usually composed of at least two ministers. The Council's approval must be sought before any treaty action.

Although the Royal Prerogative does not exist in *Israel*, Presidential authority takes a similar form, and thus, clearly shows its historical links with the Westminster model dating back to the time of the British mandate in Palestine. Under s.11 of the Basic Law on the President of the State, treaty-making power is formally vested in the President. However, it is in fact the Government which takes the decision on conclusion of international agreements.

The regulation in *Spain* is similar: the power to conclude treaties is vested in the King, albeit in accordance with the Constitution and legislation. According to Article 97 of the Constitution, the State's foreign policy is directed by the Government.

Amongst the Nordic countries treaty-making is part of the royal prerogative in *Denmark* and *Norway*. Although under Section 19 of the Constitution of *Denmark* it is formally the "King" who has treaty-making power, the Crown exercises its supreme authority through its ministers (Article 12). The active role of the Crown in treaty-making is limited to formally signing the instrument of ratification. In other respects treaty-making is carried out by the Government**,** with the Minister for Foreign Affairs usually taking the lead.

With regard to *Norway*, Article 26 of the Constitution vests general treaty-making power in the King. Since the beginning of the last century, the constitutional competences which are vested in the King have in practice been exercised by the Government. Hence, the conclusion of treaties is carried out by the Government. On the other hand, decisions of the Government still require the signature of the King in a Cabinet meeting.

Thus, despite the historical origins in States in which treaty-making is part of the royal prerogative these functions are now in fact carried out by the Government, with the role of the monarch (or in Israel the Head of state) being largely formal.

d. Treaty-making as a government function

Some States consider treaty-making to fall exclusively within the competence of the Government. Although *Sweden* and *Japan* are constitutional monarchies, the Crown has no role in the process of conclusion of international agreements, treaty-making powers being assigned to the Government alone.

In *Sweden* Chapter 10, Article 3 of the Swedish Constitution vests treaty-making power in the Government. The Government may delegate treaty-making power to administrative authorities if agreements do not require any action on the part of the Parliament or of the Foreign Affairs Advisory Council.

Likewise in *Japan* treaty-making power essentially belongs to the Cabinet (Article 73 (3) of the Constitution). In practice, treaty-making power is mainly carried out by the Minister for Foreign Affairs acting on behalf of the Cabinet.

Although the Constitutional systems and the competences of the Government in *Ireland, Malta, San Marino, Switzerland* and *Lithuania* differ considerably, these States display a common feature in that they consider the Government as having sole responsibility for the conclusion of international agreements.

Article 29 (4.1) of the Constitution of *Ireland* vests the treaty-making power in the Government. In practice the Government normally authorises the Minister for Foreign Affairs to sign or ratify, or to arrange for the signature or ratification of, a treaty. Exceptionally, in the case of International Labour Organisation Conventions, authority to sign or ratify a Convention is given to the Minister for Enterprise, Trade and Employment and may be delegated by that minister to the Minister of State for Labour, Trade and Consumer Affairs.

In *Malta* treaty-making power is essentially conferred upon the Minister for Foreign Affairs. When the treaty affects the sovereignty of Malta, or the status of Malta, under international law, the instrument of ratification must be signed by the Minister for Foreign Affairs in person under s. 3 (4) of The Ratification of Treaties Act. As far as other treaties are concerned the practice is for the Minister for Foreign Affairs to ratify such treaties as well, though he has a discretion whether to delegate power to other Ministers to ratify, approve or sign as appropriate.

In *Switzerland* treaty-making power is vested in the executive (Federal Council), without the President, as Head of state, or the Chairman of the executive having any enhanced position as such. Under Article 184 of the Federal Constitution, the Federal Council is competent to sign and ratify international treaties. It may delegate the power to a particular department by Order of Council if the agreement to be concluded is limited to technical or administrative matters.

From the information which is available on treaty-making in *San Marino* it is thought that the Congress of State, that is the Government, is vested with the competence to conclude international agreements by virtue of Article 4 (b) of the Law No. 97 of 5 September 1997.

e. Competence of federal or territorial units

Where a State has a federal structure under its constitution, or is otherwise sub-divided into smaller units which enjoy a measure of autonomy, those entities might take some part in the conclusion of international agreements. While in *Switzerland* (and it is thought in *Mexico*) the constituent units have exclusive treaty-making power with regard to matters constitutionally within their competence, in Germany the *Länder* can only conclude agreements with the consent of the Federal State. In *Belgium* the Constitution grants considerable treaty-making power to the Communities and Regions.

Article 167(3) of the Belgian Constitution states that the governments of the communities and regions are responsible for concluding treaties pertaining to matters that come within their sole responsibility. A co-operation agreement between the federal state, the communities and the regions lays down the conditions for concluding "mixed" agreements, that is treaties not concerned exclusively with the particular sphere of competence of either the communities, regions or the federal state. Mixed agreements can be signed by a representative of the federal government, ultimately authorised by the King, and the representatives of the region or community concerned. Alternatively, mixed agreements can be signed solely by a representative of the federal state acting on behalf of the King, but who also has the authorisation of the communities or regions concerned. Mixed agreements can also be signed by one or more plenipotentiaries with full powers given by the authorities concerned, including also the federal state. However, if ratification is required this must always be carried out by the King. Bilateral treaties which fall within the exclusive competence of communities and regions are ratified by their own authorities.

Under Article 32 (3) of the Basic Law in *Germany* the federal units (the *Länder*) may, with the consent of the Federation, enter into treaty relations with foreign States concerning matters within their legislative competence. Thus if the *Länder* intend to conclude such agreements, the respective *Länder* Governments are endowed with the necessary treaty-making powers. The German *Länder* do not enjoy exclusive treaty-making power, but in implementation of the Lindau Agreement[41] the central state may likewise conclude treaties on matters which generally fall into the competence of the *Länder*.

In *Switzerland* the cantons have treaty-making power with regard to those matters that fall within their Constitutional competence (Article 56). However, they are obliged to inform the Federal Council before concluding international agreements.

The answers given to the questionnaire suggest that in *Mexico* provinces and counties may conclude executive agreements within their sphere of competence.

In all other countries separate units within the State, whether they are federal units, provinces of a unitary state or dependent territories are not vested with treaty-making power themselves nor in most cases will they take part in the process of the conclusion of treaties at the international level.

2. Negotiation process

The conclusion of international agreements by ratification, approval, acceptance or signature is preceded by - often lengthy - negotiations. In many ways the process of negotiating is the most crucial phase of treaty-making as it relates to the substance of the obligations envisaged. On the other hand, the fact that negotiating in itself does not yet involve any formal or definite decision**,** suggests that detailed legal rules are not necessary to govern this stage of treaty-making.

As has been noted above (in section I), the Vienna Convention on the Law of Treaties contains procedural requirements for the representation of States in negotiations, and also for the adoption and authentication of the text. Since negotiation may be an informal matter, which in itself does not affect the legal situation of a State, none of the constitutions of the States under consideration contain explicit rules on the negotiation of international agreements. In the case of a few of the constitutions and/or statutes considered here, there is provision for the adoption of the text of the treaty. In these cases the domestic legal rules comply with the rules contained in Article 7 of the Vienna Convention on the Law of Treaties.

[41] The *Lindau* Agreement of 14 November 1957 was concluded between the Federal Government and the *Länder*. It establishes a procedure concerning all agreements to be concluded on matters within the exclusive legislative domain of the *Länder*. The *Länder* agree that the Federal Government may negotiate such agreements with foreign states but on condition that it seeks the agreement of the *Länder* before a treaty becomes binding.

Whilst in practice it is usually the government of the day, which negotiates, often with the ministry of foreign affairs taking the lead, the constitutional/legal background reveals a more differentiated approach. Some states take the approach that treaty negotiations form part of the overall process of the conclusion of international agreements. Accordingly, the competence to negotiate is formally vested in the head of state, though in practice he will seldom carry out negotiations in person. In other States the answers to the questionnaire reveal that the negotiation process is often seen as part of the conduct of foreign policy by the government.

Competence to negotiate may also be allocated to other ministries depending on the subject-matter in question. If the agreement under negotiation involves major political issues, the delegation will be led by the competent minister himself and sometimes even by the prime minister. In other cases duly authorised officials may represent the State in negotiations. Sometimes parliament is involved by way of consultation**,** though such involvement is usually limited. In situations where federal states provide their constituent units with treaty-making power the latter will also often participate in the negotiation process, though this may be as part of a larger delegation. Apart from that, States sometimes consult provincial or subsidiary units in the process of negotiation.

a. Negotiations formally assigned to the head of state

In many States the power of negotiation will often belong formally to the head of state. Negotiating is seen as one of the elements comprising the treaty-making power explicitly assigned to the head of state. In reality, however, the head of state hardly ever conducts the negotiations in person, but will authorise members of the government to act on his behalf. Sometimes constitutional practice even assumes a general, tacit authorisation in favour of the government, which will in fact take all decisions in relation to treaty negotiations, often under the lead of the minister for foreign Affairs.

In France, under Article 52 of the Constitution, the President negotiates treaties that require ratification. In practice, however, it is only exceptionally – in the most important political situations – that the President will be involved in the negotiations in person. In most cases negotiations are conducted by plenipotentiaries authorised by the President. International agreements which do not require ratification are negotiated by the Minister for Foreign Affairs or by persons authorised to do so by the Minister for Foreign Affairs on behalf of the Government. In relation to these treaties, the President is simply informed of the negotiating process.

In most other countries in which treaty-making is vested in the head of state, such powers tend to be more limited. As the Constitution of *Cyprus* requires full powers for the preliminary adoption of a text of a treaty to be conferred by the President (Article 37 (c)(1) of the Constitution), Cyprus is included in the present category. However, the role of the President is largely limited to those formalities. It is essentially the Government which authorises and leads the negotiations under Articles 54 and 169 of the Constitution. After the Council of Ministers has taken the decision to enter into negotiations, it will designate persons to represent the Republic for those purposes.

Similarly, in *Denmark* negotiations are mainly managed by the Government. Although the Constitution provides that foreign policy falls formally within the sphere of competence of the "King" (Section 19), it also specifies that the Government should undertake those governmental tasks, which are vested in the Crown under the Constitution (Section 12). The only direct involvement of the Crown is in the provision of full powers in relation to important treaties. These latter must, however, also be countersigned by the Minister for Foreign Affairs. In other cases full powers are signed by the Minister for Foreign Affairs.

In *Finland* the initiative to engage in treaty negotiations is formally a matter for the President in co-operation with the Government (Article 93 of the Constitution). However, in practice a formal decision is made only in relation to significant matters of foreign and security policy.

Initiatives in respect of other agreements are prepared by the competent ministry, in co-operation with the Ministry for Foreign Affairs, which will then initiate and manage the negotiations. Where necessary the Minister for Foreign Affairs signs full powers or credentials.

In *Greece* negotiations are authorised by the President of the Republic and the Minister for Foreign Affairs. In practice it is usually the Minister for Foreign Affairs who grants full powers to representatives. Adoption of the text of a treaty is carried out in accordance with Article 7 of the Vienna Convention.

In *Iceland* the role of the President under the Constitution is in practice delegated to the Government. Although the President must formally authorise the conduct of negotiations, negotiations are in fact initiated and managed by the Ministry of Foreign Affairs acting on behalf of the President.

The Prince of *Liechtenstein,* as Head of state, has a peripheral role in the negotiation of treaties. The Government initiates the negotiations and informs the Prince on a regular basis. The text of a treaty can be adopted only by negotiators duly authorised by means of full powers or credentials issued by the Prince and countersigned by the Head of Government or his deputy.

In *Luxembourg* the Role of the Grand Duke is limited to granting full powers for the adoption of a text of a treaty. In other respects the Minister for Foreign Affairs has full competence to negotiate. Depending on the subject-matter of a treaty he may delegate authority to another relevant minister.

In *Norway* the role of the King as Head of state is slightly stronger. He may assert the power to authorise negotiations if he regards the issue to be of general importance (Article 28 of the Constitution). In other cases authorisation will come from the Minister for Foreign Affairs. However, full powers to adopt the text of a treaty must be granted in a document signed by the King.

The majority of countries in central and eastern Europe which are the subject of this study, also assign some negotiating authority to the president. However, it should be noted that their political systems differ substantially, and a lack of information makes it difficult to evaluate the situation fully.

Although in *Albania* the President is involved in the negotiating process his role is limited to the grant of full powers where necessary. If the treaty under negotiation is an intergovernmental agreement the Prime Minister may also grant full powers in the name of the Albanian Government. In both cases the full powers are countersigned by the Minister for Foreign Affairs. Other members of the Government may initiate negotiations and be involved in the negotiating process provided they have first consulted with the Ministry of Foreign Affairs.

Though the President of *Azerbaijan* is competent to negotiate and sign international treaties on behalf of the Republic of Azerbaijan, it is usually the Prime Minister or the Minister for Foreign Affairs who exercises that power on behalf of the President. Where full powers have to be granted to delegates this is done by the President.

In *Croatia* the President must authorise the Government to enter into treaty negotiations. However, where the treaty relates purely to the economy, public services or the environment, the Government has the competence to enter into treaty negotiations without specific authorisation by the President.

Formally the conduct of treaty negotiations on behalf of the *Czech Republic* lies entirely in the hands of the President under Article 63 of the Constitution. In practice the President participates only in the most important treaties. In other cases, negotiations are delegated to the Government or to individual ministers provided that the contents of the treaty do not

exceed their respective competences (Presidential Decision on the negotiation of international treaties of 28 April 1993, No. 144/1993).

In *Georgia* the President will usually authorise officials to conduct formal negotiations including the provisional adoption of the text (Articles 11, 12 of the Law of Georgia on International Treaties). However, the Minister for Foreign Affairs may authorise the negotiation of interdepartmental treaties.

In *Lithuania* the President shall take a decision to enter into negotiations whenever the Constitution would require parliamentary approval for Lithuania to become bound by the resulting treaty. In all other situations either the Government or the Ministry of Foreign Affairs on its behalf is authorised to initiate negotiations (Article 5 of the Law on International treaties).

The situation in *Romania* is similar. In the case of treaties concluded in the name of Romania it is the President who authorises negotiations and grants full powers (Article 91 of the Constitution in combination with Article 1 of the Romanian Law on International Treaties). If agreements are intended to be concluded at the governmental level it is the Government represented by the Minister for Foreign Affairs who leads the negotiations in co-operation with the other departments involved (Article 2 of the Romanian Law on International Treaties). It is thought that the situation in the *Ukraine* is broadly similar.

The President of the *Russian Federation* constitutes the ultimate authority in negotiating international agreements. He enjoys wide-ranging powers over the negotiation of interstate treaties and the granting of full powers. Although the Government has the competence to negotiate intergovernmental treaties, the President may nevertheless override this by asserting his general authority to negotiate treaties (Article 114 (1)(e) of the Russian Constitution and Articles 11 to 13 of the Russian Law on International Treaties).

b. Negotiations as a government function

In the majority of political systems negotiation of international treaties is primarily a government function, forming an important part of the conduct of foreign policy. Whilst a number of government departments may be involved, in practice the ministry of foreign affairs will usually play the leading role. The current category of States is linked not only by the common feature that the government is effectively in control of the negotiation process, but that this is also enshrined in the law. Particular similarities may be identified between governmental practices in *Germany, Belgium Austria,* and *Switzerland* on the one hand, and on the other hand between the provisions in *Hungary* and *Lithuania*.

In *Germany* the Government enjoys wide powers in relation to negotiation of treaties on behalf of the Federal State. Usually it is the Foreign Minster, acting on behalf of the Federal Government, who authorises the initiation of negotiations, and where necessary he will issue full powers or credentials on its behalf.

In *Belgium,* negotiations relating to treaties exclusively falling within federal responsibility are conducted under the responsibility of the Federal Government. In practice the Minister for Foreign Affairs or the Secretary General of the Ministry of Foreign Affairs authorise negotiations concerning matters which fall within federal competence.

Apart from the fact that the sub-federal units in *Austria* do not have treaty-making power and accordingly, are not vested with negotiating power either, the negotiation of international treaties as a government activity resembles the situation in Germany. In *Switzerland*, the Federal Council is competent to enter into and conduct negotiations with a view to concluding a treaty. However, the Parliament participates in defining foreign policy and monitors foreign relations. The cantons are involved in the preparation of foreign policy decisions which affect their powers or essential interests.

In *Hungary* the Government is the principal actor. However, prior authorisation for negotiation of the most important treaties must be obtained from Parliament. All other

negotiations are under the direction of the Government. If necessary, full powers or credentials are issued on behalf of the Government by the Minister for Foreign Affairs.

The systems of other States in which the government bears responsibility for treaty negotiations, are linked by the particular feature that, in practice, the minister for foreign affairs will usually take the lead.

Although in *Andorra* formal negotiations have to be authorised by the Government (section 4 of the Act regulating the activity of the state in respect of treaties), it is the task of the Ministry of Foreign Affairs, in co-operation with the ministries responsible for the subject-matter of the treaty, to lead and co-ordinate the negotiations. Full powers are conferred in accordance with Article 7 of the Vienna Convention, usually by the Minister for Foreign Affairs.

Likewise in the *Netherlands* negotiating international treaties is a government task. Any minister may, in consultation with the Minister for Foreign Affairs**,** initiate negotiations.

In *Poland* negotiating power lies with the Government in accordance with Article 146 (4)(10) of the Constitution. In practice negotiations are authorised by the Prime Minister on a proposal submitted by the competent minister. The Minister for Foreign Affairs must also be consulted and, if necessary will issue full powers or credentials.

In *Portugal* the negotiating process lies entirely in the hands of the Government. Although the Prime Minister must give a general authorisation for negotiations to proceed, in practice negotiations will be conducted mainly under the authority of the Minister for Foreign Affairs, and/or other ministers, where the subject-matter falls within the scope of their departments.

Similarly in *Spain* the Government may be represented in negotiations by the Prime Minister or the Minister for Foreign Affairs in person, or any other member of the Government. Diplomatic personnel and other persons, duly identified and accredited, may also negotiate, provided they have the necessary authorisation.

Likewise in *Sweden* the Government makes the decision as to whether and how to negotiate. The detailed procedure in Sweden may vary from a formal Government decision in cases of great importance, to more informal decisions taken by the minister responsible for the subject-matter of the treaty, usually in consultation with the Ministry of Foreign Affairs. Credentials and full powers to adopt the text, as far as they are required, are usually issued by the Minister for Foreign Affairs.

Other countries in which the government is in control of the negotiating process are *Estonia, Malta, Slovenia, Slovakia* and *Turkey*.

c. The enhanced role of the Minister for Foreign Affairs

As has been seen, regardless of whether authority is formally allocated to the head of state or to the government, it is often the minister for foreign affairs who manages treaty negotiations by virtue of a general, sometimes tacit, authorisation. However, in some of the States under examination the role of the minister for foreign affairs is particularly prominent. In many cases this follows from the fact that treaty-making is seen as an integral part of the conduct of foreign policy. Some constitutions or treaty statutes, in allocating treaty-making powers, expressly provide for a pre-eminent role of the ministry of foreign affairs.

A good example is *Italy* where negotiations for international treaties essentially fall within the competence of the Ministry of Foreign Affairs, following consultation with any other ministries concerned. The competence of the Ministry of Foreign Affairs includes granting full powers. It may happen that certain negotiations, particularly bilateral ones, are conducted informally.

Likewise in *San Marino* the Foreign Minister is responsible for the negotiation of treaties. If the agreement to be concluded falls within competence of another minister, the Minister for Foreign Affairs will delegate powers to negotiate.

Another group of States, which essentially rely upon the minister for foreign affairs are the "Westminster model" countries. In the *United Kingdom* the competence to initiate negotiations primarily rests with the Foreign and Commonwealth Office, which may in turn look for advice to the government department responsible for the subject-matter of the treaty. If a government department itself proposes to enter into negotiations with its counterpart department in another State, it would normally seek the advice of the Foreign and Commonwealth Office before taking any initiative. In any event the FCO would usually maintain a certain degree of control and co-ordination. The procedure to authorise and manage negotiations is often informal, but full powers to adopt the text of a treaty are granted in accordance with Article 7 of the Vienna Convention.

Similarly in *Australia* and *Canada* the competence to authorise and conduct negotiations for a treaty primarily rests with the Department of Foreign Affairs. It is not Canadian practice to issue formal credentials for the negotiation of a treaty.

Although not part of the Commonwealth, *Ireland* follows the same tradition. Negotiating international treaties is part of government business, essentially in the hands of the Minister for Foreign Affairs. Apart from negotiations regarding International Labour Organisation Conventions (which are negotiated directly by the Minister of State for Labour, Trade and Consumer Affairs), any other minister liaising with the Minister for Foreign Affairs can engage in negotiations. Full powers and credentials are issued by the Minister for Foreign Affairs.

Israel follows a similar scheme. The Government has assigned responsibility for treaty-making to the Minister for Foreign Affairs, who normally consults with any other relevant ministry, as well as the Ministry of Justice on the legal implications of the treaty. When another ministry wishes to initiate negotiations on matters substantially falling within its field of responsibility, it must receive prior approval from the Ministry of Foreign Affairs and from the Ministry of Justice.

In another tradition, in *"the former Yugoslav Republic of Macedonia"* the negotiation of treaties is also seen as part of the executive functions of the State, which are usually carried out by the Minister for Foreign Affairs. Likewise in *Japan,* government power to negotiate international treaties is exercised by the Minister for Foreign Affairs either in person or by authorising other persons to do so on his behalf.

In *Mexico* the power to negotiate treaties is vested in the Minister for Foreign Affairs. It is thought that he may authorise other persons to lead the negotiations on his behalf.

d. The role of federal or regional units

Those States, which have a federal structure or maintain other forms of decentralisation, will in some cases involve the subsidiary units in the negotiating process. Inclusion at that early stage usually refers to agreements which if adopted would require provincial or subsidiary level approval.

In so far as the constituent units of federal states enjoy treaty-making power in their own right, they will usually participate in negotiations. Also in *Portugal* and *Spain,* though they are unitary states, the autonomous regions may participate in some cases. In *France* and the *Netherlands* their respective overseas territories are sometimes involved in the negotiations, though this is less common in relation to the *United Kingdom*.

In *Belgium, Germany, the Russian Federation, Switzerland* and *Canada* sub-federal units are involved in the negotiation of international agreements.

The position of the communities or regions in *Belgium* in relation to the negotiation of treaties is strong. They are involved in the negotiation of mixed treaties and have control over the negotiation of treaties exclusively falling within their respective competences. Where a mixed treaty is to be negotiated, full powers are granted by the Minister for Foreign Affairs with the

formal agreement of the ministers responsible for external relations at the regional or communal level.

Although in *Germany* treaty-making power is divided between the Federal Government and the *Länder* (see section I.1), the *Länder* are constitutionally prohibited from establishing their own foreign ministries. Thus, negotiations are either carried out by officials of the central government under the direction of the *Länder*, or by officials of the *Länder* themselves as *ad hoc* diplomats, which is the usual practice.

The situations of the cantons in *Switzerland* is similar to that of the German *Länder*. However although treaty-making power is allocated to the cantons, formally in some respects, in reality negotiations are usually undertaken by federal organs acting on behalf of the cantons. Additionally, the cantons participate in negotiation of federal treaties where their competences are affected (Federal Law of 22 December 1999 on participation of the cantons in the foreign policy of the Confederation in implementation of Article 55 of the Constitution). In this regard, their position is stronger than that of the German *Länder*.

In the *Russian Federation* the influence of the constituent republics is limited. In situations where the treaty to be negotiated by the Federal Government is likely to affect the position of the republics the latter have a right to be consulted (Article 4 (2) of the Law on International Treaties).

The position of the provinces in *Canada* is in effect somewhat similar. In principle, the Government does not have to take the provincial interest into consideration when negotiating. However, in practice, provinces and territories are consulted when the negotiations cover issues laying within provincial or territorial jurisdiction.

Some States likewise involve subsidiary territorial units in the negotiating process.

In *Portugal* the Constitution establishes in Article 227, paragraph 1(t), the possibility for autonomous regions to participate in the negotiation of treaties on matters which are of direct concern to them. Such participation is usually by the inclusion of representatives of the regional authorities in Portuguese delegations when such a treaty is being negotiated, as well as in the respective implementation and supervision commissions (as established by the Constitutions of the two autonomous regions).

Although the Constitution of *Spain* does not provide the autonomous regions with rights in the negotiation process, the provisions contained in the different statutes on their autonomy reflect a constitutional practice according to which the communities may ask the Government to initiate negotiations. They are usually kept informed of developments in such negotiations, in so far as their interests are affected.

In the *United Kingdom* recent constitutional changes have devolved some legislative and executive power to Scotland and Northern Ireland. Although the conduct of international relations remains within the competence of the central Government, co-ordination and consultation are carried out at an administrative level by means of “concordats”.

In relation to Overseas or Dependent Territories the practice of States differs. In *France* territories *d’outre-mer* are consulted when the negotiation of international treaties which affect the interests of these territories is envisaged. Whilst consultation with Guadeloupe, French-Guyana, Martinique and Reunion is not obligatory, such consultation is obligatory in relation to treaties concerning French Polynesia and New Caledonia. Representatives of New Caledonia and French Polynesia are granted power to negotiate and conclude agreements concerning matters within the competences exercised by these territories locally, provided such agreements respect international commitments entered into by the French Republic.

The *Netherlands* involve delegates of the *Netherlands Antilles* or *Aruba* respectively when in relation to the negotiation of agreements which affect those Dependent Territories.

Involvement of delegates from the *Channel Islands*, the *Isle of Man* and the Dependent Territories in treaty negotiations is possible but rarely occurs in the *United Kingdom.*

Section III – Domestic legal processes governing the conclusion of treaties

This section considers the domestic legal rules which may condition or limit the powers of State organs to enter into international agreements. Since the conclusion of international agreements constitutes not only a legal process at the level of international law, but also involves the exercise of governmental power, it will be subject to the relevant rules of domestic law which govern such acts.

As has been observed, the international treaty-making process has its roots in an era when considerable governmental authority was wielded by personal sovereigns. Until the end of the eighteenth century and the beginning of the nineteenth century representation of the State at the international level, including for the purposes of concluding international treaties was, in most cases, part of the personal power of the Monarch**,** to be exercised in person or by diplomats on his behalf. However, with the rise of constitutionalism, all state authority had to be derived from the law and legal rules were developed as basis for the conduct of foreign relations. Even so, foreign policy - and thus also treaty-making – was largely allocated to the head of state or the prime minister with the assistance of other members of the executive.

The establishment of democratic principles in national systems of government resulted in calls for greater accountability and transparency of executive action in international relations and especially in the field of treaty-making. With greater powers being exercised by the government, as opposed to the monarch or head of state, the parliament has also expanded its role in scrutinising and holding government action accountable. Thus, treaties have increasingly become the object of parliamentary questions and debates, public hearings, briefings, committee reports etc. With regard to treaties with considerable political repercussions or agreements which incur financial obligations or which affect rights of the individual, the parliament must usually approve the agreement, thereby ensuring greater democratic accountability. In some cases the electorate may even be asked to approve treaties directly by means of referendum.

From the perspective of democratic governance, the need for greater control of State power and hence the requirement of parliamentary approval of treaties is particularly apparent in States in which treaties are automatically integrated into domestic law. In those States, once the declaration to be bound has been submitted and the agreement has entered into force, it becomes part of the national law. Unless the legislature is involved in the treaty-making process before that point, issues as to the separation of powers between it and the executive may arise.

In addition to reasons of democratic accountability, participation of the legislature or the electorate in approving a treaty may also serve the wider purpose of encouraging a more general acceptance of the treaty and by that prepare for its performance or implementation.

The timing of these domestic legal procedures differs depending on whether the agreement is concluded by means of a multistage procedure (that is ratification or other formal act) or in simplified form (that is by signature or other equivalent means). The requirement of ratification of an agreement provides the opportunity for the involvement of different organs of State. Negotiation of the text will be largely a matter for the executive, but usually there will be a delay before the expression of consent to be bound, during which it may be possible to obtain the approval of other organs, for example the legislature, the electorate or other territorial entities within the State. The involvement of these other State organs can influence treaty-making process only when consultation occurs before the State has become irrevocably bound by a treaty. It should also be remembered that agreements in simplified form are not always concluded within the exclusive competence of the executive, and may require parliamentary approval before they can be signed.

A comparison of the countries under review should start with the observation that they are all constitutional democracies. The domestic legal procedure for the conclusion of international agreements involves the executive, the legislature and sometimes also the electorate, and where appropriate constituent units of federal or other subsidiary or dependent territories. Because treaty-making constitutes a major aspect of foreign affairs in all States, the executive is bound to play an important role, though the extent to which this is counterbalanced by the competence of other organs varies between the States under examination. There are certain categories of treaties for which almost all countries require some form of involvement of the legislature, though the means by which these are defined differ considerably. The form and extent of the involvement of the legislature may vary from simple information or consultation to express approval by legislative act.

1. Analysis of municipal legal sources

In the analysis of the requirements of domestic law governing the process of the conclusion of treaties it is necessary first to identify and compare the sources of the law in the States under examination. In most States the powers of government are usually codified in a written constitution.

However, in the *United Kingdom*, whose Constitution is not contained in a single document, the system of government is regulated by a complex system comprising *inter alia* Acts of Parliament, the common law (as established by judicial decisions), constitutional conventions and usages (that is forms of customary law). Similarly in *Israel* the Constitution is not contained in a single document, but instead rules on the organisation of a State are laid down in a set of documents forming parts of the "Basic Law". The Laws on "The Government" and "The President" respectively contain information on the conclusion of international agreements on the part of *Israel*.

As regards those States with codified constitutions the rules on treaty-making are either contained in a title chapter on international relations (*Albania, Andorra, Belgium, Croatia, Estonia, Finland, Ireland, Lithuania, "the former Yugoslav Republic of Macedonia", Sweden*), or alternatively appear in the chapters relating to the powers of the different organs of government, in accordance the constitutional allocation of powers between them.

The constitutions under consideration vary significantly in the rules they contain relating to treaty-making. In some constitutions, in many cases the older ones, treaty-making is only implicitly included: Canada – 1867; Australia – 1901; Mexico – 1917; Japan – 1946; Malta – 1964; Netherlands – 1983; Israel – 1992. In other cases the provisions relating to treaty-making are often so broadly drafted that additional rules are necessary. These may evolve informally by custom or practice or instead may be in written form in the rules of procedure of the relevant State organs or in other statutory rules.

Due to the intensification of international relations after the second world war, a process which if anything has increased in the post-cold war period, as a general rule the more recent a constitution is, the more detailed its rules on treaty-making are likely to be. As has been said they may be contained in a whole chapter on the conduct of international relations (*Albania, Andorra, Belgium, Croatia, Estonia, Finland, Ireland, Lithuania, "the former Yugoslav Republic of Macedonia", Sweden*).

Furthermore many of the former communist States of central and eastern Europe have enacted a specific treaty statute: *Albania, Azerbaijan, Croatia, Georgia, Poland, Romania, and Russia*. Similarly a number of western European States have also introduced recent amendments to their rules on treaty-making. Thus, *Belgium, Finland,* and *Switzerland* have all enacted recent constitutional amendments, whilst a number of States have adopted additional legislative provisions for international treaty-making (*Switzerland*: Federal Law of 22 December 1999 on participation of the cantons in the Confederation's foreign policy; *Andorra*: Act regulating the Activity of the State in respect of Treaties of 19 December 1996; *Malta*: Ratification of Treaties Act 1983; *Netherlands*: 1983 Act on the Approval of Treaties).

Where a federal state transfers treaty-making powers to its constituent units their Constitutions will also include rules on treaty-making. If Dependent Territories are involved, the relevant legal provisions may likewise contain special rules (*Netherlands*).

2. The involvement of different state organs

The competences of different state organs in the domestic legal processes relating to international treaty-making are of interest, as they indicate the degree to which a State regards treaty-making as an important part of the conduct of foreign policy within the domain of the executive, and also the degree to which it recognises the normative component of certain kinds of treaties**,** thus requiring the involvement of the legislature and perhaps also the electorate.

However, there are certain obstacles in the way of a precise analysis of these issues. Under the constitutions of many of the States, the competence of State organs and the procedures to be followed in relation to legislative or executive action are often both drafted and interpreted broadly. Constitutional provisions dealing with treaty-making are often limited to the organisation of treaty-making power at the international level (see sections I and II). Alternatively it may be the case that detailed procedures may be required either by domestic law or more informally through practice. Perhaps the most fully elaborated sets of rules are contained in the treaty statutes, which some States have enacted. The forms of domestic regulation of the treaty-making process are manifold.

a. The role of the executive

Traditionally the conduct of foreign policy**,** including the conclusion of international agreements**,** has formed part of the exclusive domain of the executive. The principles of transparency and democratic accountability have increasingly demanded a greater role for the parliament in the conclusion of agreements, especially where they have a considerable legal, political or financial impact on the States Parties. Nevertheless it is still true to say that in the constitutional practice of most States the executive still plays a predominant role.

The organs of the executive so empowered may differ. In traditional monarchies domestic legal procedure is traditionally associated with the royal prerogative, that is those powers, which are theoretically still vested in the Crown, though in fact these will usually be exercised by the government of the day. In other constitutions the head of state might, in practice also, wield considerable power in the political system as in the cases of executive presidencies, for example the *United States of America*, and also in many of the new eastern European constitutions. In other cases, the domestic regulation of treaty-making may place power predominantly in the hands of the government of the day, as it does in *Switzerland* and *Ireland, Slovenia* and *Israel*.

i. Heads of state

In addition to his role in the international process of treaty-making, in some States the head of state is also involved in the domestic legal procedure. However, the scope of this involvement varies considerably between constitutional systems in which the head of state has virtually no role to play**,** and those systems in which he has extensive powers over foreign policy.

It may be difficult to identify the role of the head of state in the domestic procedures for treaty-making, because the constitution provides for his involvement only at the international level. Thus for example, the Constitutions of *Germany*, the *Czech Republic*, *Poland* and the *Slovak Republic* vest authority to conclude international agreements in the President. However, whilst in practice in *Germany* the President generally has a duty to ratify treaties, which have been approved by the Parliament, in *Poland* and the *Slovak Republic* the President enjoys a discretion as to whether to do so. In the *Czech Republic* the position of the President with regard to the domestic legal process of treaty-making is more limited.

Therefore, in spite of similarly neutral constitutional provisions the powers of the head of state are in fact very different.

Presidential powers providing the president with the authority to veto legislation or to refer it back to the parliament may also apply to international agreements, where domestic law requires their parliamentary approval in legislative form. Thus, *Portugal* and *Cyprus* explicitly provide the President with a right of veto, properly so-called. On the other hand, a number of other States seem to give the president a certain amount of discretion as to whether or not to ratify an international treaty, though such discretionary power might be considerably limited by factual constraints.

Alternatively, it may be possible to determine the extent of the head of state's powers by means of a systematic interpretation of the constitution, thus if the role of the head of state is largely symbolic or representative his role in treaty-making is likely to be formal. Conversely, where he has more substantial powers under the constitution he is likely have more extensive powers in domestic law relalting to treaty-making.

a) Monarchies

In monarchies treaty-making is often considered to be part of the royal prerogative,[42] whether or not this term is expressly used. As such the monarch may still have a residual or formal role in the domestic processes leading to the conclusion of international agreements. The practical relevance and extent of these powers varies between monarchies of different traditions.

In formal terms the powers of the Crown under the Westminster model are broad. The fact that treaties have historically been concluded under the royal prerogative still bears considerable consequences for current constitutional practice in the *United Kingdom, Australia* and *Canada*. In theory the Crown has the power to negotiate and enter into international agreements. However, in practice, the Queen or Governor General does not exercise those powers in person, but instead they are exercised by members of the Government of the day, acting on behalf of the Crown.

Under the Constitution of *Norway* the King enjoys the authority formally to conclude treaties on behalf of Norway. If the treaty deals with a "matter of importance" the Government decision to conclude the treaty requires the signature of the King in order to validate it (Article 28). However, in constitutional practice since the beginning of the twentieth century this power has been considered to be part of the competence of the Government. Hence, the view of the Cabinet is decisive. Further, the wording of Article 28 ("such matters shall be dealt with by him in accordance with the decision adopted in the Council of State") suggests that**,** unlike in the States following the Westminster model, the King is formally bound by the decision of the Government.

Another State in which the sovereign is still invested with powers to conclude international treaties is *Liechtenstein.* The reigning Prince enjoys a discretion as to whether to make use of its constitutional power to conclude treaties on behalf of Liechtenstein at the international level. Thus, in theory the Prince has ultimate authority as whether to enter treaty commitments. Constitutional practice suggests that the reigning Prince is unlikely to make use of this discretion.

In *Denmark, Luxembourg*, *the Netherlands* and *Spain* the sovereign as Head of state has a purely formal role restricted to representative acts, which in the field of treaty-making amounts only to formal expression of consent to be bound at the international level. The relevant constitutional provisions (Article 19 of the Constitution of Denmark, Article 37 of the Constitution of Luxembourg, Article 42 of the Constitution of *the Netherlands*, Article 63 of the Constitution of Spain) are interpreted so as to imply a general obligation on the sovereign to implement government policy without any discretion.

[42] That is the residual powers of the Crown.

In Sweden and Japan the position of the sovereign is weaker. The role of the *Swedish* King is entirely representative without any political power. Hence, he is not involved in the processes relating to treaty-making either at the international or at the domestic legal level. Likewise in *Japan* the function of the Emperor is limited to the promulgation of treaties in accordance with Article 7 of the Japanese Constitution.

b) Presidential powers of veto

Under some republican constitutions (*Portugal, Cyprus, Greece, Azerbaijan, Georgia, Hungary, Russia, Ukraine*) the head of state enjoys a strong position by virtue of his power of veto. This clearly has the potential to affect domestic legal processes regulating treaty-making. Such powers of veto will usually take one of two forms. If the president has an absolute right of veto he can simply refuse to conclude an agreement. Most constitutions, however, confer only a qualified right in this respect, so that the presidential veto can be overridden by a qualified majority of Parliament, obliging the President to conclude the agreement under consideration.

Only in two States (*Portugal* and *Cyprus)* does the presidential veto explicitly relate to the conclusion of international agreements. Under other constitutions a qualified right of veto may be derived from the head of state's powers in relation to ordinary legislation and thus applies only to treaties requiring parliamentary approval in legislative form (though in fact these will usually include the most important international agreements). If the constitution allows agreements to be concluded by the government without the involvement of parliament, these remain unaffected by presidential powers and the veto will not affect them.

In *Portugal* and *Cyprus* the President is entitled to veto proposed international agreements. The power of veto in *Portugal* relates to international treaties which must be concluded in solemn form, that is by ratification or, where appropriate, accession (Article 136). However, there are two exceptions to that rule: firstly when a treaty has been submitted to popular approval by referendum, in which case the President has to follow its result; and secondly when Portugal is already bound by a previous treaty to ratify a further treaty. The President may also be required to sign other international agreements, which have been approved by Parliament, on behalf of the state (Article 134). In relation to this latter category the President has limited discretion to refuse to sign.

In *Cyprus* the President and the Vice-President jointly or separately have a right of veto over the ratification of treaties (by virtue of Article 48 (f) of the Constitution in combination with Article 50 (a)(ii)), with the exception of treaties relating to the participation of the Republic in international organisations and pacts of alliance in with Greece and Turkey. With regard to treaties which are not subjected to Parliamentary approval but which can be concluded by the Council of Ministers (Government), the President and the Vice-President likewise have a right of veto (Article 57 (3)) to be exercised within four days of the date of transmission of the Council's decision.

In *Greece* and a number of former communist countries in eastern Europe, presidential competences include a qualified power of veto with regard to legislation. In situations in which parliamentary consent to international agreements is required, it generally takes the form of ordinary legislation, and the presidential veto will likewise be applicable to power to enter into those treaty commitments. In these States the parliament will usually be able to override the presidential veto but the size of the majority required to do so may differ. With regard to less important treaties which do not require parliamentary approval, the President usually has a discretion whether or not to sign the agreement. If, however, presidential signature is not required, and the agreement can be concluded by the Government in its own name or by virtue of a general authorisation of the President, then the presidential veto will not apply.

The President of *Greece* has the power to veto parliamentary approval of an international treaty taking the form of a statute in accordance with Article 42**.** If subsequently an absolute majority of the total number of deputies confirms the approval, the President will be required to ratify the treaty. Even then the President may choose not to proceed to ratification at the international level (that is by not depositing an instrument of ratification), if this is warranted by important reasons.

In *Azerbaijan* a qualified power of veto may be derived from Article 110 of the Constitution with regard to those treaties that require parliamentary approval. In relation to treaty commitments, which can be entered into by the Government (that is without parliamentary approval), it is thought that the President also has a discretion as to whether or not to accept or approve.

In *Russia* the President exercises considerable influence in relation to the domestic legal aspects of treaty-making. The speed and success of conclusion of major treaties will depend on his willingness to co-operate. The President co-ordinates the proceedings and sends the draft to Parliament. Essentially he is vested with a power of veto with regard to treaties which require Parliamentary approval, that is those of greatest political importance. The President has the power to reject a proposed law within fourteen days of its submission. In order to override a presidential veto the law should again be approved in its original version, by a two-thirds majority of the total membership of the Council of the Federation *and* of the Deputies who comprise the State *Duma* (Article 107 (33)). The President can also assert his power of decision in relation to agreements of less significance, which can otherwise be concluded by the Government on its own authority (Article 11 (2) of the Law on International Treaties).

Variations of the Russian model, which accord the head of state a similarly influential position, have been adopted in other successor States of the former Soviet Union, which have recently adopted new constitutions. In *Georgia* the President has a right to veto Parliamentary approval of an international treaty within ten days after the vote (Article 68 (2)(4) of the Constitution). However, Parliament can overturn a presidential veto by a majority of three-fifths of the total number of deputies. Under the provisions of the Constitution of the *Ukraine* the President can veto treaties, which require parliamentary approval (Article 106 (30)). The veto can be overridden by a two-thirds majority of the Members of the National Assembly (Article 94).

In *Hungary* the position of the President is less powerful than in Georgia, Russia and the Ukraine. His influence is limited to a qualified power of veto, which allows him to refer a law back to Parliament for reconsideration within a period of fifteen days (or five days if urgency had been certified by the Speaker of the House). However, if the law is re-confirmed by Parliament the President is obliged to ratify the treaty (Article 26).

c) Other systems

Under other republican constitutions the role of the head of state in the domestic legal processes leading to the conclusion of international agreements is less clear. Often such constitutions contain broadly worded provisions such as “[the President] … shall ratify international treaties …” (*Italy*); or “… the President … shall … represent the Republic in international relations”(*Estonia*). In these cases the extent to which the President is involved in the decision-making process is not set out in detail. Instead the position of the President is linked with the general approach of the constitution towards separation and balance of power between executive and legislative organs.

If the functions of the president are purely representative, his powers will be limited to carrying out government decisions in the field of foreign policy, without any discretion (*Germany, Austria, Andorra* and *Iceland*). Hence, he will not have any effective competence in making decisions on the conclusion of international agreements.

On the other hand, under some constitutions the president will have power to decide whether or not to conclude the relevant treaty (*France, Turkey, United States, and it is thought in Albania, Croatia, Czech Republic, Estonia, Lithuania, Poland, Romania, and Slovakia*). In cases in which the president enjoys broad discretionary powers the limits to his authority will often depend on a full appreciation of his functions under the constitution. However, it is likely that the president will play an important role in relation to such decisions. In fact in some of these States, the president may enjoy even broader powers than under constitutions which grant the presidency a power of veto, as the latter will usually set out the circumstances for their exercise.

In the new constitutions of the eastern European countries the role and powers of the president tend to be rather strong. Thus, in *Albania, Estonia, Lithuania, Poland, Romania*, and *Slovakia* neither the approval of a treaty by parliament nor a government decision, will oblige the president to enter into an international agreement.

Exceptions are *Croatia* and the *Czech Republic*, which belong to the group of eastern European States that grant a significant role to the President in foreign relations, where the position of the President seems to be more limited in practice. The President has the power of decision only in relation to the most significant treaties, that is those which require parliamentary approval, whereas decision-making with regard to all other agreements has been conferred on the Government by general presidential authorisation (Czech Republic) or by explicit statutory provisions (Croatia).

In those western States considered here which operate presidential systems of government, the president usually enjoys discretion whether or not to enter treaties. In contrast, countries with a parliamentary tradition limit the role of the president to external representation without any executive power in foreign policy.

Although *France* is not a fully presidential system, according to constitutional practice the President of the Republic exerts broad powers in foreign relations. He has considerable discretionary powers over treaties which require ratification, although these powers are limited in relation to treaties which are subject to parliamentary approval in accordance with Article 53 of the Constitution. The President is not involved in domestic procedures resulting in government approval of international treaties. In these cases he is simply informed about their negotiation.

In *Turkey* the position of the President is comparable. As he has sole competence to ratify treaties under the Constitution, he enjoys a wide discretion and so, also, considerable influence on that part of foreign policy.

In the *United States of America*, the position of the President is striking. He plays the leading role in treaty-making both at the international level, and also domestically. Under the Constitution, the President is not obliged to ratify agreements, but enjoys discretion. In practice, however, as it will usually be his administration which initiates and conducts treaty negotiations, he will usually wish to ratify it, once he has obtained the approval of the Senate (which is often a lengthy and uncertain process).

The constitutional position of the President of *Mexico* suggests he enjoys a right to refuse ratification of international agreements and thus the possibility to block domestic legal decisions in the field of treaty-making.

The influence of the head of state on the domestic legal aspects of treaty-making in presidential systems contrasts with his purely representative position in *Germany, Austria, Andorra* and *Iceland*. In this instance the role of the head of state in treaty-making is purely formal in that he cannot influence domestic legal procedure, and is bound to ratify agreements approved by the parliament or government in accordance with the relevant constitutional provisions. Where the form of consent to be bound by an international agreement does not have to be expressed in solemn form, the president has no personal involvement.

The functions of the Presidents of *Finland* and *Italy* lie somewhere in between. The Head of state is not obliged to implement decisions which either Parliament or the Government have taken in advance, but nor does he have a wide discretion as to whether or not to ratify international agreements. Instead, the President apparently enjoys a limited discretion, though its limits are not easy to identify. Under section 93 of the new Constitution, the foreign policy of *Finland* shall be at the direction of the President in co-operation with the Government. This appears to give the President some discretion as to whether to issue an expression of consent to be bound, once he has received a proposal from the Minister for Foreign Affairs and if necessary the approval of Parliament.

Similarly in *Italy* the President exercises some influence on the domestic legal procedure. Although constitutional doctrine suggests that ratification is an act which the President cannot refuse once the Government has discussed and approved the measure, in practice he can ask for a second examination before he is obliged to express formally the consent of Italy to an international commitment.

ii. The Government

As a result of the fact that treaty-making and its preparation was traditionally considered to be part of the foreign policy competence of the executive in most states the government still plays an important role in the domestic legal processes relating to the conclusion of international agreements. In the Westminster tradition the government enjoys almost exclusive powers in this respect. In other States the government may also manage the domestic legal process for the conclusion of international treaties. However in some States there may be a degree of power-sharing between the government and the parliament.

The recent treaty statutes in many of the former communist countries contain detailed rules on competences and procedures in the preparation of international agreements. In other countries the legal base of government authority in respect of preparation of international agreements is not elaborated in detail, but has to be derived from general provisions on the competences of the executive in the relevant constitutions, together with constitutional practices. As a result it may be difficult to discern the precise scope of government authority in the treaty-making process and the assistance to be gained from the answers to the questionnaire is in some cases limited.

It is difficult to classify and evaluate the extent of government involvement as its boundaries can be fluid and may vary from agreement to agreement. Hence the order for the next paragraphs will be as follows: first the Westminster tradition and its differentiation from other systems; then other States in which the government appears to be in control of the domeg will be examined.

a) The Westminster tradition

In countries which could be said to follow the Westminster tradition the domestic legal processes applicable to treaty-making also lie in the hands of the Government. The model is rooted in the *United Kingdom*, where the decision as to whether or not to enter into an international agreement lies almost exclusively with the Cabinet, and will be based on its appreciation of the contents of the treaty. Similarly in *Australia* it is essentially the Cabinet which makes the decision as to whether to enter into an international agreement. In a slight variation from the original British model, in *Canada* the Cabinet may seek the approval of Parliament by joint resolution of the House of Commons and the Senate, although there is no constitutional obligation to do so.

b) Governmental control of the domestic legal process

In the majority of the countries under consideration the government still manages the conclusion of international treaties at the domestic level and takes political responsibility in this respect. Even if government authority is not as complete as in the Westminster model,

the process of treaty-making essentially takes place within the government. As the cabinet guides the procedure**,** the foreign policy component of treaty-making is still strong.

Although the procedure itself lies in the hands of the government, the means whereby the government may exercise control and the extent of such control differ. In some monarchies the government plays a leading role but is subject to greater limitations than under the Westminster model. There are also republican constitutions where all treaties at some point must explicitly or implicitly be approved by the government regardless of whether or not they require parliamentary approval in addition. In other constitutions decision-making will normally involve power-sharing, but with the cabinet taking the decisive role at the domestic level in relation to those agreements that do not require parliamentary consent. In still other systems domestic law will share treaty-making competence between the head of state and the government – for example, a countersignature on behalf of the government may be required to validate an act of the head of state by which he enters into an international agreement.

In order to make the material which follows more tractable, States will be grouped according to the differences just mentioned. Yet there is a danger that such categorisation is not capable of revealing the numerous shades and nuances which exist in reality.

In the kingdoms of *Denmark, Norway* and also in *Japan* the government has control of the domestic processes applicable to the exercise of treaty-making powers. Although the government has the dominant role in these domestic procedures, it is subject to some limitations which are not apparent in the Westminster model. The competence of the government of *Denmark* to decide upon the conclusion of international agreements is circumscribed by the requirement of parliamentary consent where the treaty provides for the enlargement or diminution of national territory, where the fulfilment would require the concurrence of Parliament or which is otherwise of major political importance (Section 19 (1) of the Constitution). The evaluation of the Government as to whether or not Parliamentary consent is required is subject to political (Section 15) and legal (Section 16) control. However, government authority in treaty-making in Denmark may be seen in the requirement that the consent to be bound must be countersigned on behalf of the Government.

Also in *Spain* it is essentially the Government which in practice fulfils the King's formal responsibility to conclude treaties. However, under articles 93 and 94(1) of the Constitution the following types of treaties require prior authorisation from the legislature: treaties by which an organisation or an institution is given functions derived from the Constitution; political treaties; military treaties or agreements; treaties that have a bearing on the territorial integrity of the State or the fundamental rights and duties set forth in Title I of the Constitution; treaties which create financial obligations for the Treasury; and treaties which entail the amendment or repeal of an Act or require the adoption of legislative measures for their implementation. With regard to other treaties, the Government's sole obligation is to inform Parliament in accordance with the provisions of Article 94 (2) of the Constitution.

In *Norway* the Government will in practice exercise the formal powers allocated to the King under the Constitution in the field of treaty-making, and consequently enjoys a considerable degree of control over the treaty-making process. The final decision as to whether to conclude an international agreement is taken by the Cabinet, unless the treaty is of particular political importance or its implementation requires legislative enactment (Article 26(2)). It is thought that the determination of whether a treaty is of political importance, and consequently one reason for the involvement of Parliament, is a question for the Cabinet.

Although the Constitution of *Japan* does not include a provision requiring treaties to be approved by Parliament, rules established in constitutional practice provide that the Cabinet after a formal decision will submit the following kinds of agreements to Parliament for approval: agreements which would require new legislation or revision of domestic laws; treaties which would impose financial obligations that have not been approved by the

existing budget or laws; and those which are sufficiently politically significant to require formal ratification.

The situation in *Switzerland* is noteworthy, as the Federal Council functions as both the Government and the Head of state. In principle it enjoys exclusive powers over treaty-making. However, there are some limitations on this, based on constitutional provisions which will, in certain circumstances, require the approval of Parliament (Articles 184 (1) and 166 (1)), or of the electorate (Articles 140 and 141), or the cantons; Article 55 in combination with the Federal Law of 22 December 1999 on the Participation of the Cantons in the Foreign Policy of the Confederation). Where parliamentary approval is necessary, the Federal Council submits the text accompanied by a memorandum in which the Federal Council sets out the arguments in favour of approving the treaty. Following adoption by Parliament of a resolution approving a treaty and, where necessary, approval by the electorate, the Government may then ratify the treaty. There are some treaties which the Government may conclude in its own name, without the need for specific parliamentary approval, including treaties on subjects in respect of which Parliament had given a prior general authorisation, and treaties considered to be of minor importance (Section 47 (b)(3) of the Law on Relations between the Councils).

In *Croatia, France, Cyprus*, *the Czech Republic, Hungary, Ireland, Italy, "the former Yugoslav Republic of Macedonia", Netherlands, Poland, Slovakia,* and *San Marino* an affirmative decision of the government is required, whether or not parliamentary approval must also be obtained. In those States in which the president enjoys significant treaty-making powers (e.g. *Cyprus, France* and *Italy*), the degree of control exercised by the government is correspondingly reduced. The degree of control exercised by the government, will also, of course, depend on the extent of parliamentary involvement in treaty-making.

In *Cyprus* international treaties are largely made by the Head of state and the Government whose powers largely counterbalance each other. On the one hand, all international agreements to be concluded must be the subject of a decision by the Government. Unless the agreement solely relates to commercial matters, economic co-operation (including payments and credit) or a *modus vivendi*, parliamentary approval is also required (Article 169 of the Constitution). On the other hand, decisions of the Government in treaty-making may be vetoed by the President or submitted for reconsideration (see above). In relation to the latter, however, the Government has the power to overcome the presidential rejection where it wishes to insist upon its decision (Article 57 (2)).

In *France* the President of the Republic and the Government share treaty-making power. The President of the Republic is competent to negotiate and ratify international treaties concluded in solemn form. The Government is competent to negotiate and approve international agreements in simple form. Treaties dealing with any of the subject-matters contained in Article 53 of the Constitution, that is peace treaties, trade treaties, treaties or international agreements regarding international organisations, those committing State finances, those amending legal provisions, those relating to civil status, those which result in cession, exchange or adjunction of territory, must be approved by Parliament in the form of an authorisation law.

In *Italy*, also, the treaty-making powers of the executive are shared between the Government and the President. The Government appears to have greater powers than the President in this respect. The Government can conclude agreements of minor importance, provided that it does so in simplified form. Other agreements which require ratification, will require an act carried out by the President but which is countersigned by the responsible minister. Where parliamentary consent is also required, the Government will refer the agreement to Parliament first (Article 80 of the Constitution). Authorisation to conclude a certain agreement given by Parliament does not oblige the Government to proceed to expression of consent to be bound. However, in cases in which the Government decides to do so, the President cannot refuse ratification (see above).

The system in *Ireland* still bears some residual similarities to the Westminster tradition in that the Government has a very large measure of control over the domestic legal process and, hence, plays a particularly prominent role. However, if the agreement imposes a charge upon public funds and is not merely of a technical and administrative character the Government must obtain the consent of Dáil Éireann, the lower House of Parliament (Article 29 of the Irish Constitution).

Under the Constitution of the *Netherlands* treaty-making powers are vested in the Government (Articles 45(3) and 90). The Government has power to initiate negotiations, and they are conducted under the direction of the Minister for Foreign Affairs. With regard to agreements, which require parliamentary consent, the Government will decide whether express consent must be sought or whether the agreement is appropriate for tacit approval procedure. There are also a number of categories of treaties which are exempted from the requirement of parliamentary approval. These include:

- technical treaties, which solely implement or extend existing treaties or amend annexes thereof;
- agreements, which do not impose any considerable pecuniary obligation on the kingdom and have not been concluded for a period exceeding one year;
- other agreements exempted under the Statute on the Approval of Treaties.

Where agreements of these types are to be concluded in simplified form the Government may do so in its own name.

Although the Constitution of *"the former Yugoslav Republic of Macedonia"* does not reveal the precise position of the Government within the domestic legal procedures, the answers to the questionnaire suggest that the Government can conclude certain treaties on the basis of its own decision without parliamentary approval. The examples listed are: treaties between the Government and international organisations; protocols of different programmes (although it is not quite clear what is meant by this notion); agreements on technical co-operation. A treaty which requires parliamentary approval, must first be the subject of a Government decision in favour of their conclusion.

In *Poland* an affirmative decision of the Government is always required when an international treaty is to be concluded (Article 146 (10) of the Constitution). If the treaty is listed in Articles 89 and 90 of the Constitution as requiring parliamentary approval, the Government initiates the procedures necessary to obtain the consent of Parliament.

In *San Marino* approval of the Government is a necessary requirement for the conclusion of a treaty. In appropriate cases, the treaty is then submitted to Parliament for assent. Similarly in the *Czech Republic* agreements, which require Parliamentary approval under Article 49, have first to be sanctioned by a Government decision. The process of conclusion of other treaties remains solely in the hands of the Government, to be completed by a Governmental decision. The *Slovak Republic* has a similar structure, in that regardless of whether or not treaties require the consent of Parliament under Article 119 of the Constitution, they must also be sanctioned by the Government.

In *Hungary* all international agreements must have the approval of the Government. If however the Government decides that the agreement is of sufficient political significance, it will submit the text to Parliament for its consent under Article 19 of the Constitution.

In *Germany, Austria*, and *Liechtenstein,* the Government can decide upon the conclusion of some agreements by virtue of its own authority. More important treaties must receive parliamentary consent. However, the Government continues to have political responsibility for the treaty, and this is manifested in the requirement of a countersignature by the Government on its eventual ratification. Similarly in *Portugal* the Government must countersign agreements concluded by the President.

In *Germany* all agreements ratified by the President must be countersigned by the Chancellor or any other competent member of the Government under Article 58 of the Constitution. Furthermore, some agreements can be concluded by the Government without parliamentary approval, so-called “executive agreements”. The situation in *Austria* is similar.

Likewise in *Liechtenstein* treaties ratified by the Prince require the countersignature of the Head of Government (Article 58 (1)). When the treaty does not impose any new financial burden for Liechtenstein or when the Government concludes administrative or technical agreements within the scope of its own competence, it is essentially the Government which makes the decision.

In *Portugal* domestic control over treaty-making is actively carried out by the Government and the President as the main executive organs. Agreements concluded by the Portuguese President on the behalf of *Portugal* must be countersigned by the Government (Article 140 in combination with Article 197 (1)(a) of the Constitution). Additionally, the Council of Ministers, consisting of the Prime Minister, the Deputy Prime Minister and other ministers, must approve all draft agreements whether or not parliamentary consent is necessary (Articles 197 (d), 197.1 (c), 200 (c) and 200.1 (d)).

With regard to *Andorra, Lithuania* and *Turkey* the Government is solely responsible for agreements, which do not have to be approved by Parliament. In *Andorra,* treaties which do not require parliamentary approval are essentially subject to the decision of the Government. In *Lithuania* all recommendations to conclude international agreements have to be submitted to the Government first, which then co-ordinates the preparations for conclusion (Article 3 of the Law on International Treaties). If the treaty does not require parliamentary approval (Article 7 of the Law on International Treaties) the Government will decide whether or not to conclude the agreement in question (Article 4 of the Law on International Treaties). Similarly in *Turkey* the Government is responsible for (a) treaties which are made for the implementation of a previous treaty**,** (b) treaties of an economic, commercial, technical or administrative nature, or (c) treaties which are concluded upon an authorisation given by law (Article 90 of the Turkish Constitution).

c) More limited involvement of the government in conclusion of treaties

In some of the constitutions under consideration the government acting together as a collective body is not formally charged with treaty-making powers. However, this does not necessarily indicate that treaty-making is not considered as a foreign policy competence exercisable by the executive, as in most situations government approval is required at some point. Furthermore the domestic legal aspects of treaty-making are usually under the direction of the ministry of foreign affairs (*Belgium, Georgia, Greece, Iceland, Israel, Luxembourg, Mexico, Norway*, see below) or other departments which have competence for the subject-matter of the particular under consideration (*Denmark, France, Greece, Russia*, see below). These ministries may act either by themselves or in co-operation with each other, but without the procedure being subject to any formal procedure in cabinet.

As has been discussed above, in another group of States, the role of the government is limited by the role of the president, or his administration. Thus in *Russia* and *Finland* treaty-making is largely controlled at the domestic level by the President. Although the Federal Government in *Russia* has some treaty-making powers, government authority is clearly subject to the position and competence of the President. If Parliament (the Duma) has to approve the treaty (Article 15 of the Law on International Treaties) either the Government or the President must sanction the proposal before submitting the text to the Duma. Decisions on the conclusion of other treaties may be taken by the Government by virtue of its own powers, save when the President, considering it necessary to do so, asserts his own competence (Article 11(2) of the Law on International Treaties). Individual government departments also enjoy some powers of decision in relation to interdepartmental agreements (Article 11(4) of the Law on International Treaties).

In *Finland* the role of the Government is subject to the powers of the President. The role of the Government appears to be limited to agreement upon bills for submission to Parliament for approval, where this is required under Section 94 of the Constitution.

iii. Ministry of foreign affairs

In most cases the government has wide powers in the domestic legal process relating to treaty-making. Whilst the ministry of foreign affairs as the government department primarily responsible for external activities must always be kept informed, in a number of countries the minister for foreign affairs takes a leading role in the domestic process. His powers will differ between constitutional systems in which he is charged with preparatory tasks or consultative functions, and those systems in which he essentially has control over the entire domestic legal procedure.

For example under some constitutions the minister for foreign affairs must approve certain categories of treaties, or, even, decide whether to conclude treaties under his own authority (*Japan, Georgia, Iceland, Israel, Norway, Denmark*). Under other constitutions the instrument consenting to an international agreement must be countersigned by the minister for foreign affairs, and thus he will usually bear primary political responsibility for it (*Belgium, Greece, Luxembourg, Mexico, Germany, Austria*). However, it should also be emphasised that the foreign minister often acts on behalf of the government as a whole when countersigning a treaty, and so the collective responsibility of other members of the government will be likewise engaged.

In *Belgium, Greece, Luxembourg* and *Mexico* the countersignature of the Minister for Foreign Affairs is required to validate the conclusion of a treaty by the Head of state. Likewise in *Germany* and *Austria* not only the Chancellor but in certain situations also the Minister of Foreign Affairs is competent to countersign acts of the President in the process of conclusion of treaties (Article 58 (2) of the German Constitution; Article 67 (2) of the Austrian Constitution). In *Albania* and *Portugal* certain agreements of minor importance can be concluded by the Government: more significant treaties, though ratified formally by the President will require a governmental countersignature, which in practice is mainly carried out by the Minster for Foreign Affairs.

In *Japan* the formal competence of the Cabinet in the field of treaty-making is in fact carried out by the Minister for Foreign Affairs, who in doing so incurs political responsibility for the whole process (Article 73 (3) of the Constitution).

In *Georgia, Iceland, Israel, Norway* and sometimes also in *Denmark*, the Minister for Foreign Affairs has the competence to decide whether to conclude certain agreements in co-operation with other Cabinet members or under his own authority. In addition to the responsibility of the Foreign Minister of *Denmark* for managing the preparation of international agreements, he also has the power to decide whether to conclude treaties in simplified form, unless a decision has been taken in Cabinet. Similarly in Georgia the Minister for Foreign Affairs co-ordinates and authorises conclusion of interdepartmental treaties (Article 11 of the Law on International Treaties). In *Iceland* the Minister for Foreign Affairs has considerable powers in the field of treaty-making: with the exception of situations in which parliamentary approval is obligatory (under Article 21 of the Constitution), it is for the Minister for Foreign Affairs to decide which agreements are of such importance that they have to be submitted to Parliament rather than being left to a decision of the Cabinet. Decisions in respect of other treaties are made by the Foreign Minister on the basis of his own authority.

The conclusion of international treaties in *Israel* always requires the approval of the Treaty Division of the Ministry of Foreign Affairs. The Minister for Foreign Affairs of *Norway* has the competence to decide upon the conclusion of treaties, which do not require parliamentary approval in accordance with Article 26 of the Constitution

In some of the States under examination the particular functions of the ministry of foreign affairs relate to the preparatory stage of treaty-making. The minister might initiate the necessary processes at both the international and domestic levels, and guide an agreement through the stages leading to the conclusion of the text. In *Cyprus* the initiative to conclude an international agreement usually begins with the Minister for Foreign Affairs who asks the Cabinet to authorise the commencement of negotiations. In situations where a treaty is subject to parliamentary approval as a bill, it is usually the Minister for Foreign Affairs who will introduce it in the House of Representatives. Also in the *Czech Republic* the Minister for Foreign Affairs will always be consulted before the decision to negotiate or to conclude an international agreement is taken.

In a number of States the ministry of foreign affairs is essentially involved in the preparation of the text for approval, which it then sends to other governmental organs which have the power to carry out the further stages. In *Azerbaijan* and *Finland* it is usually the Minister for Foreign Affairs who submits a proposal for the conclusion of an international treaty to the President. In *Lithuania* the Ministry of Foreign Affairs guides treaties through the domestic process, where parliamentary consent is not required. While in *Estonia*, the *Netherlands*, *San Marino* and *Slovenia* the Ministry of Foreign Affairs makes the necessary preparations for the relevant parliamentary procedure, that is it submits the draft to Parliament and the Foreign Minister will be politically accountable.

The preparatory functions of the Minister for Foreign Affairs are shaped in a somewhat different way in *Croatia* and *Italy*, where the Minister essentially acts as co-ordinator for consultation among the different government bodies concerned throughout the treaty-making process.

iv. Other ministries

As treaty-making is generally seen as part of foreign policy, relevant powers are primarily granted to the head of state, the Government as a whole, or the minister for foreign affairs. However, depending on the subject-matter of the agreement in question, other departments or government institutions might also be involved.

In domestic legal procedure, generally all government departments affected will at least be informed and consulted. Sometimes other ministers are entitled to prepare and take decisions on the conclusion of interdepartmental agreements when they concern subject-matters falling within their departmental competence. The ministry of justice is sometimes consulted as to the legal consequences of the treaty, and certainly if the treaty is going to give rise to financial obligations, the opinion of the ministry of finance might be requested.

In *Albania* and *Poland* the requirement of countersignature by the Head of Government is intended to establish his political responsibility and accountability to Parliament. Similarly in *Germany* and *Austria* the Chancellor acting on behalf of the Cabinet will usually countersign agreements ratified by the President and by that accept political responsibility for them. In addition government departments are in charge of the preparation and conclusion of interdepartmental agreements within the limits of their competences. However, those agreements will still require either formal signature by the President, or at least a prior general authorisation by the President.

Some constitutions may provide that certain kinds of treaties must be exclusively subject to the decision of the ministries affected. If under the law in *Denmark* a treaty requires neither ratification, nor a decision taken in Cabinet or by the Minister for Foreign Affairs, the minister within whose competence the subject-matter of the treaty falls, may take the necessary decisions. In practice administrative agreements are decided upon in that way. Likewise in *France* interdepartmental agreements can be concluded by the department concerned by exchange of letters. In *Greece* agreements which do not require the consent of Parliament, as a general rule, have to be approved by a decision of the competent minister. Members of the Government of *Romania* are entitled to conclude agreements at the government level

provided they do not require approval by Parliament (Article 4 on the Law of Conclusion of Treaties).

The situation in *Luxembourg* is slightly different where ministries do not have the power to conclude interdepartmental agreements on the basis of their own authority, as all agreements have to be authorised by the Grand Duke. Instead, the minister responsible for the subject-matter of the treaty under consideration has to append his countersignature to it.

Although government departments in *Russia* are in principle vested with authority to conclude interdepartmental agreements, their competence ultimately depends on the approval of the Foreign Minister and is subject to the assertion of competence by the Cabinet (Article 11 (4) of the Law on International Treaties). If the competence of the executive bodies of the constituent republics is affected, the latter have to agree as well (Article 6).

Sometimes the involvement of other government departments does not primarily serve to secure political accountability, but is intended to ensure legal or financial scrutiny. The respective institutions usually fulfil a purely consultative function. They express their opinion as to whether the State should become a party to the treaty or whether reservations or declarations are desirable. They might also advise on any necessary implementing legislation.

Treaty-making in *Greece* entails a special examination of the financial consequences of those international agreements which under constitutional law are subject to parliamentary approval. The Ministry of Finance has to report on the financial implications of the agreement and subsequently approve any expenditure. The report is then laid before Parliament together with the agreement

In *Japan, the Netherlands, Slovenia*, and *Sweden* agreements, which must be given parliamentary approval, must be submitted to consultative governmental bodies before they are laid before Parliament. Similarly, in *France* international commitments which require parliamentary approval must be submitted to the Government before they are submitted to Parliament. Before an international commitment is submitted to Parliament for the purposes of ratification or approval in accordance with the procedure set out in Article 53 of the Constitution, the bill must first be submitted to the *Conseil d'Etat* for an advisory opinion in accordance with the procedure laid out in Article 39 of the Constitution. In *Japan* the text of an agreement to be concluded must be submitted to the Cabinet Legislation Bureau at some stage. In the *Netherlands* Article 73 (1) of the Constitution provides that the Council of State is to be consulted before a treaty is submitted to Parliament for approval. Treaty-making in *Slovenia* must be sanctioned by the Parliamentary Committee for International Relations. Only implementation agreements, which can be concluded by the Government alone, are exempted. Furthermore, the opinion of the Ministry of Finance is mandatory if the treaty requires any new or specific financial obligation.

The Foreign Affairs Advisory Council of *Sweden* may authorise "emergency treaty-making" in situations where the interests of the States so require, but the necessary parliamentary approval is refused or not available (Chapter 10, Article 2 (3) of the Constitution). Normally the Council must be informed and consulted by the Government before concluding international agreements (Chapter 10, Article 6 of the Constitution). In addition, the Government has to seek the opinion of the Law Council if the implementation of the future agreement is presumed to necessitate the enactment of new legislation. The consultations have to take place before the draft treaty is submitted to Parliament for approval.

In *Israel* and the *Ukraine* the approval of the treaty by the Ministry of Justice is mandatory. The treaty has to be certified as being in accordance with domestic law or, alternatively, it must be ascertained that appropriate implementing legislation has been prepared.

b. The role of the parliament

One of the most crucial issues in this comparison of procedures under domestic law is the role of the parliament. The involvement of the parliament enables an additional degree of democratic control to be exercised over acts of the executive in the exercise of powers in the field of foreign policy. In broad terms, the involvement of parliament can ensure greater transparency and accountability of the executive in the field of treaty-making. In any event the participation of parliament in the broad treaty-making process is often inevitable, in so far as treaties increasingly affect of the rights of individual persons within the States Parties, or seek to amend existing legislation. For example, human rights treaties and agreements on unification of private law rules often require legislative action at the municipal level.

Under most constitutions, whether or not the parliament has been consulted throughout the negotiation stage, its formal involvement will take place only after the text has been agreed upon, and before the competent organ issues the consent to be bound at the international level. Only the Constitution of the *Netherlands* exceptionally allows treaties to be submitted to Parliament for assent after the State has already become bound at the international level. However, if such retroactive assent were not forthcoming, the Government would have to terminate the international commitment as soon as possible

From what has just been said it might be thought that submission of a treaty for parliamentary approval generally only extends to those agreements which are concluded by means of a multistage procedure (for example signature subject to ratification, or approval or acceptance). However, constitutional provisions requiring parliamentary consent might be equally applicable to treaties in a simplified form (that is, concluded by signature or exchange of letters).

The role of the parliament is often closely linked with the effect a duly concluded treaty has in domestic law. If the conclusion of treaties in international law requires the amendment of domestic law, parliamentary involvement is clearly necessary. If this were otherwise and a treaty were to have the force of law without the involvement of parliament and purely as a result of its adoption by the executive, the principle of separation of powers would be compromised.

On the other hand, where the conclusion of a treaty at the international level does not have any effect in domestic law, it might legitimately be treated primarily as an executive function, unless fundamental political decisions are involved. Hence a transfer of sovereignty to an international organisation, or an agreement incurring long-standing or significant financial obligations might require the involvement of the legislature, by virtue of democratic principles.

A related aspect of democratic control, which may also support the involvement of the parliament, is in the promotion of transparency in governmental decision-making and activity. The parliament might fulfil such a role whether or not the treaty requires legislative approval, through its right to require information and its powers of scrutiny in relation to acts of the executive.

In very broad terms constitutional developments in western Europe have produced two different traditions with regard to the role of parliament. Interestingly, recent developments in the law on treaty-making in the former communist countries appear to seek to amalgamate elements of both, as part of the process of democratisation. One tradition is typified by the Westminster practice (*United Kingdom, Australia, Canada, Israel*). As treaty-making is formally carried out under the royal prerogative, without the necessity of parliamentary approval, the role of parliament is to hold the executive politically accountable, which may be carried out through powers of scrutiny, consultation or the right to information.

The other tradition developed in continental European States requires that treaty-making should have legislative consequences, thus ensuring parliamentary involvement. Some systems require parliamentary approval as a general rule, which is then subject to exceptions listed in the constitution (*Cyprus, Luxembourg, "the former Yugoslav Republic of*

Macedonia", Mexico, Netherlands, Romania, Switzerland, Turkey, United States of America), while other constitutions list the cases in which approval is required, either by enumeration (*Albania, Andorra, Azerbaijan, Croatia, Estonia, France, Georgia, Greece, Iceland, Italy, Liechtenstein, Lithuania, Malta, Poland, Portugal, the Russian Federation, Spain, Ukraine*) or by describing the situations rather broadly (*Austria, Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Norway, Slovakia, Sweden,* and it is thought *Japan*).

Due to the legislative effects of international treaties in most of these systems, parliamentary approval often takes the shape of a formal statute. If countries require a parliamentary resolution, they emphasise the aspects of transparency and democratic control, rather than the normative aspect of the process of treaty-making (*Austria, Denmark, Japan, Liechtenstein, Portugal, Slovakia, United States*). The Constitution of the *Netherlands* authorises the possibility of tacit approval (Article 91 (2)), unless the treaty provisions deviate from the constitution.

It is therefore necessary to examine the role of the parliament in the various countries under consideration in greater detail. The following survey seeks to distinguish between consultative functions of parliament and the requirement of parliamentary consent.

i. Informal powers (information or consultation)

In most constitutions, parliamentary powers of control over the organs of the executive includes a general right to information about governmental activities. With regard to international governmental agreements, which do not have repercussions in the domestic legal system or are otherwise of minor political importance, the parliament's authority is usually limited to a right to be informed. In those situations the interest of parliament to be involved is limited, as legislative functions are not at stake and control of the government can be sufficiently realised by invoking the political accountability of its members.

In, for example, countries following the Westminster model, the fact that international agreements as such do not have any force in domestic law, is the *rationale* behind the lack of parliamentary involvement in treaty-making. However, within this tradition the parliament has a right to be informed of the executive's intentions under the Ponsonby Rule[43] and similar practices in other States sharing the same tradition. In these countries international treaties do not usually require the consent of the legislature but are solely laid before the parliament for purposes of information.[44]

However, information and consultation requirements might also serve a rather different purpose. Legislative bodies or parliamentary committees might be consulted prior to the approval of parliament being sought, in order to secure enhanced political acceptance of the proposed international commitment. Involvement of the parliament at an early stage of the treaty-making process can provide its members with the opportunity to gather sufficient information and expertise in order to ensure the effectiveness of subsequent debate and voting on the proposal. In those situations information and consultation does not serve to satisfy the minimum standard of parliamentary involvement, but is part of a close co-operation.

a) The Westminster tradition

In the Westminster tradition international agreements are primarily treated as part of foreign policy and in themselves have no impact on domestic law. Hence, treaty-making constitutes a governmental function, which by law does not require substantial involvement of the parliament.[45]

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[43] See (a) The Westminster tradition.

[44] In theory the operation of the Ponsonby rule enables the opposition to call for a debate on the proposed ratification in questions. However in practice Parliamentary time is so limited that it is extremely unlikely to occur.

[45] However, the requirements of legislative enactment of treaties may subsequently require an Act of Parliament, to ensure implementation in domestic law (see section VI). Thus, any treaty which requires financial commitments or taxation, or which confers or removes private rights will require parliamentary enactment.

In the *United Kingdom* the text of every treaty that is subject to ratification, acceptance, or accession is laid before Parliament, twenty-one working days prior to ratification, under the so-called "Ponsonby Rule". The exact status of the Ponsonby Rule is not clear, though it may by now have achieved the status of a "constitutional convention". This provides Parliament with the opportunity to debate the provisions of a treaty before its conclusion, if Parliament so desires. With regard to other treaties, for example in simplified form, the Government has a discretion as to whether to submit them to Parliament after initialling and before signature. It will usually do so where there has been sufficient parliamentary interest in the contents of the treaty. In all other situations the text of a treaty is brought to Parliament's attention after entry into force.[46]

Australia and *Israel* follow largely the same tradition, and so does *Canada.* However in Canada the Government may occasionally decide to seek the approval of the House of Commons and the Senate, despite the fact that Canadian law does not impose any obligation in this respect. Situations where approval has been requested include treaties, which involve military or economic sanctions, political or military commitments of a far-reaching character, or agreements, which envisage large expenditure of public funds. The Government of Canada furthermore adopted the practice of submitting important treaties to appropriate committees of Parliament for consultation purposes prior to tabling them before Parliament as a whole.

b) Right to Information

Some Constitutions explicitly contain the duty to inform Parliament about those agreements, which do not require its consent. Thus the Parliaments of *Albania* and *Japan* are informed by their respective Prime Ministers about international agreements, which are not subject to the consent of the legislature. Similarly the Parliaments of *Andorra, Mexico, Spain* and *Turkey* have to be informed about agreements that do not require parliamentary approval. In *Ireland*, there is a constitutional requirement that every international agreement to which Ireland becomes a party be laid before *Dáil Éireann* (the House of Representatives).

Information requirements in *Finland* do not directly relate to Parliament as such, but to its Foreign Affairs Committee. The Committee can request reports on treaties, which do not have to be submitted to Parliament for consent. However, the Speaker's Council may decide that the report shall be taken up for debate in plenary session (Article 97 of the Constitution).

In *Poland* the obligation to inform Parliament has a double feature: in situations where parliamentary consent does not have to be obtained, the Prime Minister has a duty to inform Parliament of the Government's intention to submit the treaty to the President for ratification (Article 89 (2)). Additionally, the President is obliged to report to the Sejm and the Senate once he has ratified an international agreement on behalf of the Republic of Poland.

c) Consultation duties reinforcing parliamentary scrutiny

The Constitutions of *Belgium, Denmark* and *Romania* supplement the approval procedure by additional requirements that the executive consult Parliament, the underlying purpose of which is to mobilise political support for, or acceptance of, the treaty under negotiation.

Article 168 of the Constitution of *Belgium* provides that both Chambers of Parliament have to be informed of negotiations relating to any revision of the Treaty of the European Union as soon as the negotiations start. The contents of the draft treaty have to be brought to the attention of Parliament prior to signature.

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[46] Further exceptions, where the role of the executive is curtailed by the requirement of parliamentary consent in statutory form, are the old exception of cession of territory and the exception in relation to s. 6 of the European Elections Act 1978 requiring that treaties providing for an increase of the powers of the European Parliament must be approved by the United Kingdom Parliament before it can be ratified by the UK, see *R. v. Secretary of State for Foreign and Commonwealth Affairs ex parte Rees-Mogg* [1994] 1All ER 457.

The Government of *Denmark* is obliged to consult the Foreign Policy Committee prior to making any foreign policy decision of major importance (Section 19 (3) of the Constitution).

In *Romania* the opinion of the Legislative Council has to be sought before a treaty is ratified under Article 79 of the Constitution. The Council serves as an advisory expert body to Parliament.

ii. Approval

Constitutional requirements for parliamentary approval of the exercise of treaty-making power vary. Some constitutions assume a general duty to obtain the assent of the legislature and list exceptions. Others describe the situations in which treaties must be submitted to the parliament for positive sanction in a rather general way. In some States the constitution will enumerate precisely the types of agreement requiring the consent of the parliament. By contrast political systems following the Westminster tradition will generally not make requirements for parliamentary approval (*United Kingdom, Australia, Canada, Israel*).

In most countries in which parliamentary consent is a constitutional requirement, this will have to be done by an affirmative vote, and will either take the form of an ordinary law or might be drafted as a parliamentary resolution. Requirements as to the necessary parliamentary majority often differ, depending on whether the treaty affects the domestic legal system. If a country accepts the possibility of silent approval, the parliament will not have to approve the treaty formally, as in the absence of a negative vote the agreement is deemed to have been approved.

Where parliamentary approval is required, it cannot generally be given subject to amendments of the treaty, though a notable exception is the *United States'* Senate**.** However, in other cases, the parliament may suggest or demand that declarations or reservations are made on ratification and thereby influence the contents of the treaty (see section IV).

a) Approval as an exception or as the rule – different constitutional approaches

Most of the constitutions considered here require an affirmative vote in statutory form. In a few States approval takes the form of a parliamentary resolution (*Austria, Liechtenstein, Portugal* and, subject to some exceptions, *Denmark, Slovakia*, the *United States* and, it is thought, *Japan*). The feature of the constitutions which varies more significantly relates to the situations or types of treaty, which require consent. The relevant provisions sometimes lay down a general duty to seek parliamentary consent and then provide for exceptions, or alternatively they might describe the respective situations in which consent is required either in broad terms or more precisely.

i. Constitutions defining the situations in which consent is required

A considerable number of the countries under consideration contain in their respective constitutions and treaty statutes detailed lists describing the kinds of treaties for which the consent of the parliament must be sought. These lists refer to particular subject-matters and/or to the formal requirement of ratification of proposed treaties. Of those countries whose constitutions contain this kind of enumeration, the new constitutions and treaty statutes of the former communist countries do so in particular detail. By contrast, the equivalent provisions in the constitutions of many western European States are usually drafted in a broader manner. In either case the proper scope of application of such provisions may not be easy to identify in particular cases, and will always be subject to interpretation.

In broad terms, the kinds of treaty, which are specifically described in the relevant constitutional or statutory provisions on the requirement of parliamentary consent, relate to agreements, which have considerable political, financial or legal repercussions for the participating States. Thus they will often include: agreements which impose financial obligations on the State concerned; agreements which require implementation by the enactment of legislation; agreements involving changes to territorial boundaries; agreements on defence issues, or issues of war and peace; and agreements which affect fundamental rights of the individual. Almost always treaties which concern membership of international organisations will require consent, especially if they entail the transfer of sovereign rights. Additionally some constitutions will require parliamentary consent to a treaty based on the purely formal criterion that it must be ratified.

Accordingly under Article 121 of the Constitution of *Albania* treaties must be sanctioned by Parliament if the treaty involves territorial questions; constitutes a peace treaty or founds an alliance; concerns political and military issues; affects human rights questions; concerns the membership of Albania in international organisations; imposes financial obligations on Albania; requires the enactment, amendment or repeal of legislation; or if the agreement itself requires formal ratification. Additionally, treaties are sometimes voluntarily submitted to Parliament.

The Constitution of *Andorra* lists a wide range of topics on which treaties will require Parliamentary sanction in Articles 64 (1) and 65 of the Constitution. These include treaties which concern Andorra's membership of international organisations; which relate to internal security and defence, which entail changes to territory; which affect fundamental rights as contained in the Constitution; which impose new burdens on the public finances; which are intended to create or modify provisions of a legislative nature or require legislative measures for their implementation; which deal with diplomatic functions or judicial co-operation. Furthermore, the Government may request Parliament to approve any other treaty.

Article 8 of the Law on Treaties of *Azerbaijan* contains a specific list of treaties which must be submitted to Parliament for approval, including: treaties on friendship, co-operation and mutual assistance; treaties determining the principles of interstate relations; peace treaties; treaties involving cession of territory, with certain exceptions; treaties about participation in regional and universal international organisations; treaties on accession to interstate unions or other interstate communities; multilateral or long-term economic treaties; treaties involving public loans; treaties entailing changes to the law; and treaties on the deployment and stationing of troops.

The Constitution of *Croatia* demands parliamentary approval for treaties if they require the passage or amendment of laws; if they have a political or military character; if they involve financial commitments for the Republic; or if they transfer sovereign powers to international organisations (Articles 133 (1) and 132 (2)).

In *Estonia* the treaties which require parliamentary consent are: those which amend State borders; those which must be implemented by legislative amendment; those which relate to

the membership of international organisations**;** those which incur military or financial obligations; and those which are subject to ratification (Article 121 of the Constitution).

According to Article 53 of the Constitution of *France*, peace treaties, trade treaties, treaties or international agreements regarding international organisations, those committing State finances, those amending legal provisions, those relating to the status of individuals and those which result in cession, exchange or adjunction of territory have to be ratified or approved by law.

Under the Constitution of *Georgia* the requirement of parliamentary approval applies to military treaties, to agreements that affect the extent of State territory and certain loan agreements. Also agreements which require formal ratification must be approved by Parliament.

Article 36 (2) of the Constitution of *Greece* states that parliamentary approval is necessary for commercial treaties; treaties relating to taxation or economic co-operation; accession to international organisations; agreements which have to be implemented by legislative measures; or agreements which impose burdens on Greek citizens.

In *Iceland* parliamentary approval is required for agreements, which entail cession of territory or require changes in the State system (Article 21). Thus the constitutional powers of Parliament in the process of treaty-making appear to be rather narrow. However, in practice many treaties not falling within one of the categories listed are nevertheless submitted to the Althing for approval, where the subject matter of the treaty to be concluded is of political importance, for example, because it affects the rights of individuals or is the subject of political controversy.

In *Italy* treaties of a political nature, or which provide for arbitration or judicial settlement, or entail modifications of the nation's territory, or impose financial burdens, or require modifications to the law, all require the consent of Parliament under Article 80 of the Constitution.

Article 8 (2) of the Constitution of *Liechtenstein* provides that treaties must be given Parliamentary approval if national territory is ceded or national property is alienated, if they involve the transfer of sovereign rights, if they give rise to new burdens for the State or its citizens, or if implementation would restrict the rights of the citizens of Liechtenstein.

In *Lithuania*, in accordance with Article 84 (2) of the Constitution and Article 8 (2) of the Law on International Treaties, only the President has the power to submit a treaty to Parliament for ratification.

The Ratification of Treaties Act in *Malta* requires parliamentary approval for treaties affecting the sovereignty, independence, unity or territorial integrity of Malta, or its status under international law, or the maintenance or support of such status. In practice authorisation is also sought when changes in law are required, though there is no express legal obligation to do so under the Act.

Article 89 of the Constitution of *Poland* contains a list of agreements which require Parliamentary consent in the form of a law: peace treaties; alliances; political or military agreements; agreements affecting rights or obligations of citizens as specified in the Constitution; treaties establishing the Republic of Poland's membership of an international organisation; treaties imposing considerable financial consequences on the Polish State; treaties on matters regulated by statute in domestic law or in which the Constitution requires a statute. Article 90 adds treaties transferring sovereign competence to an international organisation or institution.

Similarly the Constitution of *Portugal* enumerates various types of treaties, which require parliamentary approval (Article 161), including: treaties for the membership of Portugal in international organisations; treaties of friendship, peace or defence; and agreements that

concern boundaries or military matters. In addition, Parliament's approval is necessary for agreements dealing with matters arising from Parliament's exclusive law-making powers.

In *Russia* Article 15 of the Federal Law on International Treaties contains a detailed list of treaties requiring approval by the State *Duma*. It will apply, where implementation of the treaty requires amendment of national law; where the treaty affects basic human rights and freedoms; where the treaty affects delimitation of Russian territory; where the agreement relates to basic principles of interstate relations or matters affecting the defence capability of Russia; where the agreement constitutes a disarmament treaty; where the treaty relates to the maintenance of international peace and security, including collective security agreements; and where the agreement requires formal ratification.

Articles 93 and 94(1) of the Constitution of *Spain* enumerate the types of treaties which require approval by the *Cortes*. These are: treaties transferring sovereign rights to an international institution; political treaties; military agreements; treaties that have a bearing on the territorial integrity of the State or on fundamental rights and duties as established by the Spanish Constitution (Title 1); treaties which create financial obligations for the treasury; and treaties which require the adoption of legislative measures for their implementation.

The Constitution of the *Ukraine* demands treaties to be approved by Parliament, where they relate to matters of friendship, mutual assistance and co-operation or neutrality; where they concern military assistance; where they deal with general financial issues, or loans and credits; where they relate to territory or peace; where they affect human rights and freedoms, or issues of citizenship; where they concern membership of international organisations or in collective security systems; where they protect the historical and cultural heritage of the Ukrainian people; where implementation would require amendment to the law; and where the treaty itself requires ratification.

Some constitutions describe the situations in which approval is required in broad, and rather general terms, which are open to interpretation. The clauses used often refer to the political importance of the agreement or to its implementation in domestic law. Sometimes the constitutional provisions simply state that all "important treaties" have to be sanctioned by the parliament. Although the constitutional formulations differ considerably from those just described which contain detailed lists, such differences are of form rather than substance. The requirement of parliamentary approval covers the same core types of agreement, that is those which have considerable legal or political consequences or financial repercussions and those which require transfer of sovereign rights. With the exception of *Japan, Hungary* and *Slovakia*[47] the States which adopt such general formulations belong to the *Germanic* and *Scandinavian* legal families.

Article 50 (2) of the Constitution of *Austria* demands parliamentary approval for political treaties, including those which provide for the transfer of sovereign rights. Moreover, treaties which have to be implemented by legislation have to be approved. The latter constraint also covers constitutional amendments (Article 44).

The *Czech* Constitution formulates the requirements for parliamentary approval in broad terms. Under Article 49 (2) of the *Czech* Constitution the consent of Parliament in the form of a statute is necessary in relation to treaties on human rights and fundamental freedoms; political treaties; economic treaties of a general nature; and treaties whose implementation would require legislation.

Under Sections 19 and 20 of the Constitution of *Denmark* the consent of Parliament is required in relation to agreements which involve territorial changes and transfer of sovereign power to international organisations. Parliament must also approve the implementation of other agreements, in particular those involving additional expenditure and/or legislative enactment. The requirement that any treaty obligation of "major importance" must also to be submitted, allows the Government discretion in relation to other treaties.

[47] All of these have many common features with the Germanic legal family.

In a broadly drafted provision the Constitution of *Finland* requires "acceptance of Parliament …for such treaties and other international obligations which contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by Parliament under [the] Constitution" (Article 94). The transfer of sovereign rights would certainly be covered.

Article 59 (2) of the *German* Constitution requires the sanction of the legislature if the treaty deals with the political relations of the Federation or relates to matters of federal legislation, the latter clause describing agreements that would require the enactment or amendment of laws for their implementation. Amendment of constitutional provisions and transfer of sovereign rights require the consent of Parliament (Articles 23, 24, 79).

By virtue of Article 19 of the Constitution of *Hungary* treaties of outstanding importance are subject to parliamentary approval. In practice, as revealed by the answers given to the questionnaire**,** all treaties which require formal ratification are covered, while bilateral treaties of a technical nature are not.

In *Ireland* the approval of *Dáil Éireann* (the House of Representatives) is required for treaties (other than those of a technical and administrative character) which involve a charge on public funds (Article 29).

Under Article 26(2) of the Constitution of *Norway*, treaties on matters of special importance and treaties whose implementation necessitate legislation or a decision by Parliament, cannot be consented to at the international level before the Storting has given its approval thereto

In *Slovakia* treaties have to be sanctioned by Parliament if the Slovak Republic enters into an alliance with other States, if the treaty has a political content, or constitutes an international economic agreement of a general nature. Furthermore, international treaties have to be approved if they are going to be implemented by legislation.

Similarly the Constitution of *Sweden* demands agreements to be submitted to Parliament for approval if implementation of the agreement requires legislation, or if the agreement concerns a matter which the *Riksdag* is constitutionally obliged to decide (Chapter 10, Article 2). In practice any agreement of major importance is submitted to Parliament in order to obtain its consent. If the interests of the State so require, the approval of Parliament can exceptionally be replaced by consent of the Foreign Affairs Advisory Council.

It is difficult to assess the precise circumstances in which parliamentary consent must be obtained in *Japan*. The Constitution simply provides that Parliament shall be involved "depending upon the circumstances" (Article 73), without further defining the means and the extent of such involvement. However, Parliamentary consent is necessary if the treaty requires new legislation or revision of existing laws; if the treaty imposes additional financial obligations on the Government; and if the treaty contains a ratification clause.

ii. Constitutions with a general approval requirement

Certain constitutions assume a general duty to submit treaties for approval and will thus contain only express exceptions.

Starting from a general duty to obtain parliamentary approval (Article 169 (2)) the Constitution of *Cyprus* exempts agreements relating to commercial matters, economic co-operation (including payments and credit) and *modus vivendi* (Article 169 (1)).

Under Article 37 of the Constitution of *Luxembourg* all treaties have to be approved by Parliament except those which solely implement existing international treaty obligations of Luxembourg.

Although the Constitution of *"the former Yugoslav Republic of Macedonia"* does not list subject-matters of treaties required to be submitted to Parliament for approval, the answer to the questionnaire (probably reflecting the provisions of the Treaty Statute) states that treaties

concluded between the Government and international organisations, protocols of different programmes (it is not clear what treaties are included in that expression), administrative agreements and agreements on technical co-operation do not require parliamentary consent.

The Constitution of *Mexico* simply demands that all formal treaties require approval by Parliament (Article 89 (X)). It is thought that agreements generally have to be approved unless they are concluded in simplified form.

The concept of parliamentary consent as applied by the *Netherlands* starts from a general rule that treaties require the approval of Parliament (Article 91 (1)), unless they are listed as exempt under the Law on the Approval and Publication of Treaties. The exemptions cover: treaties which are exclusively concerned with the implementation or extension of other treaties to which the Netherlands is already a party (unless Parliament expresses the wish that they be submitted for approval); treaties which amend annexes to a treaty already approved (unless the original act of approval specifies otherwise); treaties that do not impose any substantial pecuniary obligation on the Kingdom and have been concluded for a period not exceeding one year. The said Law also refers to exceptions contained in other legislation, though these are minor and rather technical.

The Constitution of *Romania* contains a general obligation to have international treaties approved by Parliament (Article 91 (1)). Also in *Switzerland* a general provision of the Constitution requires that treaties are to be approved by the Federal Assembly (National Council and Council of States) unless a federal law has delegated competence to the Federal Council (Article 166 (2)).

The Constitution of *Turkey* assumes a general obligation for international treaties to be adopted by the Turkish Grand Assembly, but also lists a number of exceptions. These are as follows: agreements regulating economic, commercial and technical relations and covering a period of no more than one year, provided they do not entail any financial commitment and provided they do not infringe the status of individuals or property rights of Turkish citizens abroad and do not result in amendments to Turkish law; also agreements in connection with the implementation of an international treaty; economic, commercial, technical, or administrative agreements which are concluded provided they do not result in amendments of Turkish law.

The starting point for congressional involvement in treaty-making in the *United States* is the general rule contained in Article II paragraph 2 of the US Constitution. Accordingly, the presidential power to make treaties requires the advice and consent of the Senate whose members represent the states from which they are elected. The Senate plays a major role in the treaty-making process in the United States, often scrutinising proposed treaty texts article by article and even requiring amendments or reservations as a condition of their approval.

However, US constitutional practice also provides certain alternative procedures, which to a certain extent reduces the special role of the Senate:

1. the President may submit an international agreement to Congress for approval by normal Statute.

2. Alternatively, Congress, by normal legislation, may delegate to the President the authority to ratify a future international agreement.

3. In certain circumstances, the precise scope of which is still controversial, the President can exceptionally enter into international engagements without any participation of the Congress or the Senate.

The choice of procedure will ultimately be based upon the President's appraisal, but he must take account of the basic constitutional requirement in Article II, paragraph 2. If the

agreement itself requires ratification, the President is obliged to follow the procedure prescribed in Article II, paragraph 2, and seek the consent of the Senate.

b) Majority requirements

Depending on the contents of the treaty and its effects on the political, financial, constitutional or legal situation of the parties to the agreement**,** different levels of parliamentary legitimisation seem to be required. In most systems treaties must be approved by a majority of those present and voting, subject to a quorum requirement. Only *Azerbaijan, Andorra* and *Georgia* demand consent of the absolute majority of all constituent members as basic standard for treaty approval.

As a basic rule treaties concluded by the *United States* require the approval of two-thirds of the Senators present (Article II, paragraph 2), although in practice other procedures are sometimes followed which to some extent modify the strict requirements of the Constitution (see above).

The Constitution of the *Netherlands* authorises the possibility of tacit approval unless the treaty requires amendment of the Constitution (Article 91(2)). Tacit approval may be obtained where, after thirty days following the submission of the agreement to both Chambers, there has been no objection forthcoming from any group of members consisting of at least one-fifth of the total number of members of either Chamber.

If treaties either explicitly or implicitly amend provisions of the Constitution, parliamentary approval must usually follow the procedures required for constitutional amendment. In those situations the constitutions often require a two-thirds majority of all members (for example Austria, Finland, Germany, Netherlands).

By contrast there are some constitutions, which require special majorities for the conclusion of international agreements that entail the transfer of sovereign rights to international organisations. In *Albania* and *Greece* a simple majority of the Assembly members is required in this respect, while in *Andorra* and *Croatia* such treaties must be approved by a two-thirds majority vote of all members of the legislature. The Constitution of the *Netherlands* requires approval by two-thirds of the votes cast. *Luxembourg* likewise demands a two-thirds majority, but with the proviso that at least three-quarters of the members are present.

In *Poland*, in principle a two-thirds majority of both Houses is necessary for the transfer of sovereign rights. However, the *Sejm*, by an absolute majority in the presence of at least half of the eligible members, can chose to submit the treaty to a nationwide referendum instead (Article 90 (4)).

Similarly, in *Spain* Article 93 of the Constitution requires an “organic Act” to be passed before the conclusion of treaties which transfer to international organisations powers which arise under the Constitution. Such an organic act must be passed by an absolute majority of members of parliament, in a final vote on the draft as a whole.

The Nordic constitutions of *Denmark, Norway* and *Sweden* contain particularly strict majority requirements for the transfer of sovereign rights to international organisations. While *Denmark* requires a majority of five-sixths of members, in *Norway* the *Storting* has to approve any delegation of sovereignty by 75% of at least two-thirds of members. In *Sweden* the decision has to be taken by a majority of three-quarters of those present, and if the transfer of sovereign competence affects fundamental laws it must additionally satisfy the constitutional requirements for the adoption of fundamental laws (Chapter 8, Article 15 of the Constitution).

The constitutions of *Finland, “the former Yugoslav Republic of Macedonia”* and *Slovenia* provide for a two-thirds majority requirement in particular situations: The Constitution of Finland requires a two-third majority of all votes cast if the contents of a treaty gives effect to an alteration of national borders (Article 94). If *“the former Yugoslav Republic of Macedonia”* intends to join in a union with other States**,** two-thirds of the total number of the

representatives of the Assembly have to vote in favour (Article 120 (2)). *Slovenia* demands a two-thirds majority, in order to approve a treaty transferring rights in immovable property to foreigners (Article 68 (2)).

If the *Czech Republic* either concludes international human rights treaties or agreements, which would require constitutional amendments, three-fifths of the deputies of each Chamber must agree (Article 29 (4) in combination with Article 10 of the Constitution).

c. Plebiscite

In some states the demands of democratic accountability in treaty-making will involve the electorate directly**,** and this will be done by means of a referendum. Voting in referenda will usually take place after the domestic legal process of treaty-making has been completed and before the formal act of ratification or approval takes place. The procedures used can vary. Consultation of the electorate is in some cases optional and others obligatory. Similarly the result of a referendum might have compulsory effect under some constitutions and only advisory or consultative effect under others.

From the point of view of democratic governance there seem to be three main reasons for states to hold referenda in relation to international agreements:

First, it may be a requirement of the constitutional or national legal system.

Second, approval of the electorate by referendum might simply be considered a normal form of enhanced democratic legitimisation, particularly where a treaty will have immediate effects in the domestic legal system, as soon as it comes into effect in international law, that is a variation on the theme of the separation of powers.

Third, a state might wish to seek direct democratic legitimisation of treaties with far reaching political consequences. Hence, some constitutions contain particular provisions, which literally involve the people in the process of treaty-making. In this respect, transfer of sovereign power to international institutions or other states will often demand the sanction of the electorate, and may thus be seen as deriving from principles of governmental transparency and accountability.

Unless the implementation of a referendum is explicitly prohibited (*Georgia* and *Italy*) or the prohibition can be derived from the fact that it is alien to the system of constitution (e.g. *Germany, United States*), States are usually entitled to consult the electorate with regard to plans to incur international obligations with considerable political consequences, as has been done by the *United Kingdom* and *Denmark* in relation to membership of the European Communities.

In examining the relevant practice a distinction will be made between states which specifically provide for referenda with regard to the process of treaty-making and those which will generally consult the electorate on important political questions or directly involve the electorate in the process of domestic law-making.

i. Express referenda requirements in respect of treaties

A number of constitutions contain particular provisions requiring approval by the electorate for important international agreements. The situation most often described in this regard is where the transfer of elements of sovereignty to an international organisation or another state is proposed.

The holding of a referendum is not compulsory in *Albania, Croatia, Liechtenstein,* or *Poland.* Whereas referenda must be held in *Ukraine* when a territorial change is proposed. In *Switzerland* it is necessary to hold a referendum before accession to collective security and supranational organisations**. I**n *"the former Yugoslav Republic of Macedonia"* and the *Ukraine* referenda must be held in relation to membership of unions of states. Referenda must also be held in *Denmark* and *Ireland* if a proposed treaty requires constitutional amendment.

The Constitution of *Albania* contains the option to consult the electorate on international agreements by which Albania delegates state powers to an international organisation (Article 123 (3)). Although the holding of a referendum is optional its result will be binding.

In *Croatia,* the House of Representatives can initiate a referendum with regard to matters falling within its competence (Article 89). Hence, in situations where parliamentary approval is required for the conclusion of agreements, it might seek to consult the electorate.

If *Denmark* intends to delegate sovereign powers to international authorities and the authorising bill does not receive a majority of five-sixths of the members of parliament, it will become subject to approval by referendum (Section 20 (2) in combination with Section 42 of the Constitution). Furthermore, a referendum is obligatory if the treaty to be concluded would require constitutional amendments (Section 88).

In *France*, in accordance with Article 11 of the Constitution, the President of the Republic can decide to organise a referendum on any draft law aimed at authorising the ratification of a treaty which, although not contrary to the Constitution, would affect the functioning of state institutions. According to Article 53 of the Constitution, any treaty or agreement which would result in cession, exchange or adjunction of territory can only be ratified or approved by means of a law with the consent of the population affected.

In *Ireland,* Articles 46 and 47 of the Constitution require the participation of the electorate if the entry into force of the said treaty would require the amendment of the Constitution.

Any parliamentary decision consenting to an international treaty in *Liechtenstein* may be subject approval by referendum, if Parliament so decides or if within thirty days following an official promulgation of the decision of Parliament at least 1 500 members of the electorate or at least four local authorities so request (Article 64, 66 bis of the Constitution).

If the competent authorities in *"the former Yugoslav Republic of Macedonia"* decide to associate in a union or community with other states, the decision has to be approved by a majority of the total number of registered voters (Article 120 (3) of the Constitution).

In *Poland*, parliamentary institutions might decide to hold a referendum in order to sanction a transfer of sovereign competence to an international organisation or institution. The result of the referendum will be binding if more than half of the electorate participate (Article 90 (3) in combination with Article 125 of the Constitution).

If the Government of *Slovakia* proposes to enter into an alliance with other states this would require confirmation by referendum (Article 93 (1) in combination with Article 98 (1)).

Constitutional law in *Switzerland* contains extensive referendum requirements for the conclusion of international agreements. If the government proposes to enter into organisations of collective security or supranational communities, a referendum must be held (Article 140 (1)(b)). Upon the request of either 50 000 citizens or eight cantons, referenda must be held on treaties of indefinite duration without possibility of termination**;** on agreements that involve multilateral unification of law; and on treaties that provide for accession to an international organisation (Article 141 (1)). Furthermore, the Federal Assembly may decide to submit other treaties to the electorate for approval if they are considered to be treaties of major importance (Article 141 (2)).

Under the Constitutional law of the *Ukraine,* treaties that would introduce territorial changes are subject to an obligatory referendum (Article 73 of the Constitution).

ii. General powers to consult the electorate

Where important political or legal issues are to be decided, the government may be required, or may have a general power, to consult the electorate directly. It is important to bear in mind that where treaties become part of domestic law automatically on their entry into force at the international level, such constitutional rules as may govern referenda in relation to domestic law-making will also apply to treaty-making.

In *Austria,* the majority of the House of Representatives can decide to carry out a referendum on a specific piece of legislation (Article 43 of the Constitution). As international agreements usually must be approved by the Austrian Parliament in the form of a statute, treaties can thus be subjected to the same process.

In *Croatia,* the President, in co-operation with the government, may initiate a referendum *inter alia* with regard to issues which he considers to be important for the independence, unity and existence of the Republic (Article 87). Although the holding of a referendum is optional, the result is compulsory provided the majority of the electorate is in favour.

In *Portugal,* referenda on international treaties may be initiated by Parliament (Article 161 (j) of the Constitution) or the government (Article 197 (1)(e)) depending on which organ has the competence to approve the relevant treaty (Article 115 (1)). However, the president has the final decision on whether to call a referendum (Article 115 (1), 134 (c)), and must also submit the proposal to the Constitutional Court. However treaties relating to peace, boundaries and the educational system are excluded from the provisions on referenda (Article 115 (4)(5)).

In *Slovenia,* Parliament can choose to submit international treaties in the form of an ordinary statute to a referendum. A referendum must take place, where it is demanded by at least one third of all elected deputies of the National Assembly, by the Government or by at least 40 000 voters.

Consultative referenda can be held on treaties, as on any other issues of particular political importance under the Constitutions of *Estonia* (Article 105), *Finland* (Article 53), *Greece* (Article 44(2)), *Hungary* (Article 28) and in *Spain* (Article 92).

d. Special functions of constituent units of federal states, provinces and dependent territories

If a state has a federal structure or is subdivided into provinces and/or autonomous regions or includes dependent territories, those entities might also be included in the domestic legal processes relating to treaty-making. If those entities have treaty-making powers in their own name in relation to certain kinds of treaties (see ii), they will likewise have charge over the necessary domestic legal procedures. However, also in situations where the central authorities conclude the agreement at the international level, constituent units, regions or dependencies might possess certain powers or rights in relation to the process at the domestic legal level. Such units might either be directly involved, that is where domestic law requires their consultation or even approval; or they may indirectly influence the domestic legal process, where for example, they constitute a second legislative chamber, whose consent to certain treaties is necessary.

i. Constituent units of federations

With the exception of *Australia* and *Canada* which only provide an informal consultation process, all of the other federal states under consideration involve their constituent units in the process of treaty-making. This can be explained by the particular structure of a federation, in which the constituent units enjoy some aspects of statehood, including some legislative, executive and judicial powers. Consequently, the authorities of the central state are dependent on the constituent units when they want to implement international agreements and the subject-matter of the treaty lies within the range of competence of the latter. Hence, the co-operation of the constituent units is required. This may be obtained by their involvement in domestic treaty-making.

As the Commonwealth countries of *Australia* and *Canada* still consider treaty-making to be part of the royal prerogative, the influence of the constituent units is accordingly weak. Although the constituent units are consulted at an early stage and tabling of an agreement before the parliament is also done in the second federal Chamber, they do not possess any legal means to influence the outcome.

In *Austria,* the provinces can indirectly influence treaties, where the latter would require modification of constitutional law. In those situations, the House of Representatives will make a proposal to the senate which, as the chamber in which the provinces are represented, has a right of objection. An objection of the senate can only be overcome by the House of Representatives if it confirms its resolution in the presence of at least half of its members (Article 50 (3) in combination with Article 42 of the Constitution). Furthermore, it is common practice that the provinces are given an opportunity to present their views, if the treaty under negotiation would require implementation by them.

The law in *Belgium* allocates treaty-making powers to the communities and regions. If these latter make use of this power at the international level, they generally take the necessary decisions according to domestic law, but must notify the Council of Ministers. In situations where *Belgium* has no diplomatic relations with the contracting party or where the proposed treaty is inconsistent with *Belgium's* international or supranational obligations, objections raised by the Council of Ministers may block the procedure. (Article 81 of the Institutional Reform Law of 8 August 1980, as amended by the Law on the International Relations of the Communities and Regions of 5 May 1993; see above – Section II).

The *Länder* in *Germany* are involved in the domestic legal process of treaty-making. In so far as they are vested with treaty-making powers in their own name, they will also manage the necessary domestic processes. However, the consent of the federal government is also required (Article 32 (3), 24 (1a) Basic Law). In most other situations the *Länder* may also exercise indirect influence in the federal council (composed of representatives of the governments of the *Länder*). Hence, if a treaty requires changes of constitutional law or amends the treaty of the European Union, it must receive approval by a two-thirds majority in the federal council (Articles 23, 79). Approval by a simple majority of the federal council is also required if the act implementing the treaty in domestic law, requires the consent of the federal council. A *Land* always has to be consulted before a treaty is concluded if it affects the interests of that *Land* (Article 32 (2)).

If the provinces or counties in *Mexico* have concluded executive agreements within their field of competence, they are also in charge of the domestic legal procedure.

The constituent republics in *the Russian Federation* have both direct and indirect powers by which they influence the domestic legal processes relating to treaty-making. As soon as a draft treaty affects the competence of one of the republics, a special co-ordination mechanism starts to work, which enables the republics to exercise direct influence. If the treaty to be concluded falls within the exclusive competence of a republic, agreement should be reached between the central state and that republic before the treaty is concluded (Article 4 (1), Law on International Treaties). In other situations a consultation procedure is initiated (Article 4 (2), Law on International Treaties).

The republics may exercise indirect influence over treaty-making where the Russian law on the conclusion of international treaties requires Parliament to approve the treaty (see above). Once the State Duma has given its approval of a proposed treaty, it must be passed to the Federation Council (which consists of deputies from the representative and executive bodies of the republics) for its consideration and approval (Articles 95, 106 of the Constitution, Article 17 of the Law on International Treaties).

Switzerland has a strong federal structure, in which some treaty-making powers are also granted to the cantons. With regard to treaties made under such powers, the cantons take charge of the domestic legal procedure (Article 56 of the Constitution). Furthermore the cantons also exercise considerable influence in relation to other treaties in so far as they must be approved by the Council of States consisting of representatives of the Cantons (Article 166).

The influence of the states in the *United States* is particularly strong. As a rule (Article II (2) of the Constitution), formal treaties must be approved by the Senate. The fact that a two-

thirds majority is required furthermore increases the strength of the Senate (which is composed of representatives of the states). Executive agreements, as developed by constitutional practice, are subject to prior or subsequent authorisation in the Senate and the House of Representatives. In some exceptional cases, the President is allowed to conclude less politically significant agreements in his own name without the consent of Congress.

ii. Provinces and regions

Some states which have a unitary structure are nevertheless comprised of territorial entities, which enjoy some degree of autonomy. As such these units may be involved in the process of treaty-making. However, they will usually not have decision-making powers in their own right, without the approval of the central government.

In *Croatia, France* and *Italy* respectively, the territorial units form a second parliamentary chamber, and thus will have some influence over treaty-making where the consent of the parliament is required. Similarly, in *Spain*, the territorial units are represented at least partially in the second Parliamentary Chamber. The House of Counties in *Croatia* consists of Representatives directly elected by the citizens in the counties (Article 71 (2) of the Constitution). The Senate in *France* represents territorial authorities as well as French citizens living abroad (Article 24 of the Constitution). In *Italy,* the Senate is composed of deputies directly elected on a regional basis (Article 57). The first chamber of Parliament in the *Netherlands* is composed of members chosen by the provincial councils (Article 55). If a treaty to be concluded by *Spain* requires approval of the Cortes, this includes the Senate, comprising both senators who are directly elected and those who are indirectly elected by the legislative assemblies of the regional governments (Article 69).

Finally it should be noted that if the text of a treaty, which is going to be concluded by *Portugal* relates to an autonomous region, the respective governments have to be consulted (Article 229 (2) of the Constitution).

iii. Dependent territories

The characteristic feature of dependent territories is their territorial location at a distance from the central authority and their historic, usually colonial, origin. They are usually vested with special autonomy, which can take different forms. Hence, if *Denmark, France* and the *Netherlands* intend to apply treaties to their dependent territories, the latter entities are involved in the decision-making process.

If *Denmark* wishes to extend the application of international treaties to the Faroe Islands or to Greenland, the Home Rule Act requires the respective territorial governments to be consulted before the final decision to be bound is taken.

The territories and departments of *outre-mer*, *France,* like other territorial entities, send delegates to the senate, which as the second chamber is involved in the parliamentary approval of treaties where appropriate. Furthermore, the dependent territories of *French Polynesia* and *New Caledonia* as well as the *collectivités territoriales de la République* (Article 72 of the Constitution) must be consulted about agreements relating to matters within their field of competence or forms of regional co-operation. Other territorial entities can be consulted, too.

If the *Netherlands* consider the conclusion of international treaties, which would affect the *Netherlands Antilles* and *Aruba*, the Council of Ministers is enlarged by a plenipotentiary minister nominated by the Government of the Netherlands Antilles and/or Aruba respectively (Articles 7 and 8 of the Charter of the Kingdom of the Netherlands). The Council will then have to take preliminary decisions on whether or not to proceed to conclusion. In relation to economic or financial agreements, which would be binding upon the Netherlands Antilles or Aruba respectively, the territories have a right to veto the decision (Article 25 of the Charter of the Kingdom of the Netherlands).

If a treaty which is going to affect the Netherlands Antilles and/or Aruba requires consent of Parliament, the bill must be communicated to the overseas representative bodies, simultaneously with its submission to the Dutch Parliament. If the agreement will be binding on the authorities of the Netherlands Antilles and/or Aruba, it must be approved by the overseas parliament as well as by the Dutch Parliament in the form of a kingdom act.

Section IV- Reservations and declarations

Even in situations in which States have, in principle, decided to enter into an international agreement, these might want to exclude the application of certain provisions of the treaty or ensure certain ways of interpretation. Hence, they might decide to enter reservations or issue declarations. Competence in relation to reservations is usually exercised in parallel with the process of treaty-making under international and national law. Even if there are other possibilities in theory, in practice they appear unlikely.

The crucial issue for present purposes, however, is as to the involvement of parliament. In this respect reservations might be treated differently to the treaty itself. To the extent that they are seen purely as questions of foreign policy, they might not be laid before the parliament at all, but be solely decided by the cabinet or its chairman (that is usually the prime minister or the chancellor) or by any other competent organ of the executive. Alternatively, parliament might be informed and consulted or parliamentary approval be sought. In some states, parliament has the power to initiate the making of reservations and declarations, or even to condition its approval on the treaty-making organ issuing an interpretative or reservation when signing, ratifying or otherwise expressing the state's consent to the treaty at the international level.

Analysing the legal situation country by country is difficult, as the problem of reservations and declarations is usually not covered by constitutional provisions. Only in the states which have enacted treaty statutes (and notably the central and east European countries) do any formal legal rules governing the subject appear. Otherwise one has to rely on constitutional practice, which is often obscure and in some cases is an insufficient basis for evaluation.

1. Executive competence

Some states assign competence to organs of the executive, that is either the cabinet as a whole, the chairman of cabinet (that is the prime minister or the chancellor), or the minister for foreign affairs, without involving the parliament. The reason appears to be the view that that reservations as well as declarations essentially pertain to matters of foreign policy. In contrast to the decision to engage in an important international agreement, reservations and declarations do not extend the states' legal obligations in the international field. Instead, reservations exclude certain consequences, and hence, alleviate the international obligations of the reserving state, while declarations might promise the advantageous effect of ensuring a certain interpretation which is favoured by the declaring state.

In *Andorra* reservations are made and withdrawn by the government, on the advice of the Minister for Foreign Affairs.

If *Austria* makes or withdraws a reservation, the decision appears to be made by the President or the minister who is vested with the treaty-making power. It is thought that Parliament has little involvement.

The state organ which exercises the power to make an international treaty on behalf of the *Czech* Republic, is at the same time vested with decision-making power in relation to the formulation of reservations and their withdrawal. Accordingly the President or the cabinet or individual members thereof may do so.

Likewise in *France,* the competent organs of the executive enjoy a complete discretion as to whether to enter or withdraw reservations or to make declarations to treaties concluded by

France. If the executive decides to consult Parliament, it does so voluntarily. Accordingly, the executive organs are not obliged to follow any advice offered by Parliament.

The situation in *Hungary* is less clear. It appears that it is the state organ vested with the power to enter into the treaty, which decides whether it is necessary to make a reservation or object to reservations made by other states. Hence, the President or the government would be in charge of making reservations or withdrawing them.

In *Ireland,* Article 29 of the Constitution does not entail a specific requirement that reservations or declarations should be submitted to the Dail for approval.

Since the responsibility for the substantive decisions with regard to the conclusion of international treaties in *Italy* lies with the executive, decisions as to reservations, the withdrawal of reservations and objections to reservations made by other states also fall within the discretionary power of the executive. In particular, it is the Minister for Foreign Affairs - where appropriate at the request of another government department - who makes or withdraws reservations and objects to reservations made by other countries.

In *Lithuania*, the institution which is authorised to conclude the international treaty may also submit a proposal as to whether a reservation or declaration should be made or withdrawn. The declaration or reservation must be included in the law of ratification.

In relation to *Malta, "the former Yugoslav Republic of Macedonia", San Marino* and *Turkey,* it is known that the executive makes decisions as to whether reservations should be made or withdrawn, while in *Mexico* the Minister for Foreign Affairs is essentially responsible for the decision to make reservations or**,** later**,** to withdraw them.

2. Involvement of parliament

Where parliament is involved in the decision-making process on reservations to particular treaty provisions, the underlying rationale would appear to be that reservations might be seen as unilateral quasi-amendments of the treaty provisions in question, and therefore might be considered as part of treaty-making in the broad sense. Accordingly, a state might extend parliamentary powers in the treaty-making process to the question of reservations. Thus it might be said that parliamentary involvement in relation to reservations is rooted in broadly similar principles of democratic accountability, which are the basis of its role in the treaty-making process.

Where parliament has a role in the process of making reservations, by virtue of a constitutional or other provision, the impact is generally restricted to situations where the legislature is able to influence the domestic legal process of treaty-making, e.g. by consultation or sanction of certain kinds of agreements. Thus the parliamentary role in relation to reservations is unlikely to involve substantial new powers.

The extent to which parliament is involved varies. Some states provide that the executive should simply provide information to and consult with parliament, while in others parliamentary approval must be sought. Some even vest parliament with the power to initiate reservations in the course of the procedure of approval of the relevant treaty, or with the authority to require the organ ratifying or otherwise concluding a treaty at the international level to make certain reservations. In the latter situation the legislature seeks to condition its approval of the agreement on the making of reservations.

a. Consultation and information

In *Japan,* as well as in the states which follow the *Westminster* tradition, the executive will inform parliament of certain kinds of reservations which it has decided to make. Yet, the legislature has no power to influence the decision of the executive to make reservations.

Where a treaty has been signed by the *United Kingdom* but is subject to ratification, any declaration or reservation made by the United Kingdom at the time of signature will appear with the treaty text laid before Parliament under the *Ponsonby* rule. However, where the

United Kingdom makes a reservation or declaration only at the time of ratification or accession, any such declaration or reservation may not be presented to Parliament in advance. *Australia* basically follows the same pattern, as does *Israel*.

The procedure in *Canada* is slightly different due to the fact that the provincial and territorial governments would be consulted in the case of multilateral conventions whose subject matter falls wholly or partly within provincial or territorial jurisdiction.

Although the power to make reservations or to withdraw them is an exclusive competence of the executive in both *Greece* and *Japan*, the respective governments follow a constitutional custom of informing parliament.

b. Approval procedure

In states in which parliament has the power to approve reservations in relation to treaties which require its approval, the legislature's power may be limited to consent or refuse the treaty as a whole, including proposed declarations or reservations.

In *Albania,* the answers to the questionnaire suggest that reservations and their withdrawal have to be sanctioned by Parliament if the treaty itself is listed as requiring parliamentary approval.

In *Croatia,* the power of the executive to conclude treaties includes the power to formulate reservations and the authority to withdraw reservations. However, in the case of those categories of treaties which are subject to parliamentary confirmation, reservations must be incorporated in the law confirming a treaty.

In *Estonia,* the government proposes reservations to be made or withdrawn, as well as objections to the reservations of other states, alongside the draft law, which it submits to Parliament when parliamentary approval is necessary.

The consent of the Parliament of *Finland* is necessary when the reservation concerns a provision of a treaty for which parliamentary approval is required. This requirement applies to both the making and withdrawal of a reservation.

Under Article 22 of the Law of *Georgia* on International Treaties, the state body that decides the binding force of the treaty in question is responsible for entering or withdrawing reservations. Hence, in situations where the treaty itself is subject to parliamentary approval, Parliament exercises similar powers over reservations.

If a treaty concluded by *Iceland* requires parliamentary approval, a reservation thereto must similarly be approved. In appropriate circumstances the withdrawal of reservations also has to be sanctioned by Parliament.

Similarly, where the consent of the Diet in *Liechtenstein* is required for the conclusion of an international agreement, it must also approve reservations and their withdrawal, once they have been proposed by the Prince on the advice of the government.

In *Norway* reservations and their withdrawal are treated in the same way as ratification. A decision is taken by the Cabinet in the form of a royal decree. If the treaty has to be approved by Parliament, the reservations must be included in the draft submitted. After Parliament has sanctioned the treaty including any reservations, the King may not make any amendments to the reservations appearing in the draft approved by Parliament.

If a treaty to be concluded by *Poland* is subject to authorisation by Parliament, the government will have to submit reservations to Parliament for approval. If the government later on intends to withdraw the reservation, parliamentary approval will likewise be required. The situation in *Romania, Slovakia, Slovenia* and the *Ukraine* is the same.

The decision as to whether a reservation should be made or withdrawn in *the Russian Federation* follows exactly the same procedure as the treaty to which it is attached (Article 25 of the Law on International Treaties). Hence, a reservation must be approved by

Parliament if it relates to a treaty which must receive parliamentary consent. Reservations to government agreements will be made by the government unless the President asserts the power to do so. At the international level, notification of a reservation or its withdrawal is either issued by the President or, if it relates to an agreement within the competence of the government and is not subject to ratification, by the government.

c. Powers of initiative

In those states in which the legislature has power to initiate reservations, the extent of those powers may vary. Thus while in some states parliamentary powers in relation to reservations are essentially limited to a simple power to initiate, in other states the power of initiative represents another means of parliamentary control additional to requirements of parliamentary approval for the treaty as a whole.

In *Cyprus,* if parliamentary approval of an international agreement is required (Article 169 (2) of the Constitution), Parliament may initiate reservations. However, it does not have the power of final decision over reservations. Instead the ultimate decision whether or not to make or withdraw a reservation is made by the Council of Ministers, which may act on the advice of the Attorney-General or on the recommendation of the appropriate ministry (Article 54).

In addition to the fact that reservations made by *Luxembourg* require parliamentary sanction, the legislature can itself initiate reservations where a treaty is submitted to it for approval.

In *Portugal,* the decision to make or withdraw reservations to a treaty is taken by the same authorities, which have competence to approve the treaty as a whole, that is Parliament or the government. However, Parliament may reject reservations proposed by the government or propose new reservations, according to Article 216 (1) of the Regiment of the Assembly of the Republic. On the other hand, the acceptance of and objection to reservations made by other parties to a treaty is a decision for the Cabinet as part of its responsibility for the conduct of foreign policy.

The situation in *Sweden* is similar. Although it is usually the government that decides whether a reservation should be made or withdrawn, the Riksdag may also take the initiative. If parliamentary approval has to be sought for the treaty, the government will normally submit the reservations, which it intends to make at the same time.

d. Conditioned approval

In some states in which parliament has the power to approve an international agreement, it may also be able to condition that approval on the formulation of certain reservations in order to exclude certain effects of the treaty as presented to it.

Where the consent of the Parliament of *Denmark* is mandatory for the ratification of a treaty, Parliament's consent can be made conditional on certain reservations being made. In such cases, the government is bound to act in accordance with the conditions imposed by Parliament. In the other situations, if the government itself intends to make reservations, the government is obliged to inform Parliament.

If a treaty concluded on behalf of *Germany* has to be approved by the legislature, the latter must be informed of and consulted with regard to reservations or declarations envisaged by the government. This rule is not formally laid down but has arisen from consistent constitutional practice. Further, the legislature has the power to initiate reservations and, in principle, the power to make such reservations a condition of its approval of the relevant treaty. In these circumstances, the President is obliged to make those reservations when ratifying the treaty. Alternatively, the legislature can also require the executive organs to ratify an agreement unconditionally.

If the legislature does not make a statement on reservations and declarations proposed by the executive, the latter will have a discretion make those reservations when it ratifies the

treaty**.** All reservations must be published in the federal gazette. If at some later point the federal government would deem it appropriate to make a reservation to a treaty to which the Bundestag has unconditionally consented, the basic law does not endow the Bundestag with the power to object.

Although in the *Netherlands* it is generally the government which initiates reservations or their withdrawal, it has to submit them to Parliament for approval if the treaty itself requires parliamentary consent. During the approval procedure, Parliament itself may propose reservations to be made by the government and make its approval conditional on their issuance.

The Government and Parliament of *Spain* jointly decide on reservations to treaties which require parliamentary approval. In this type of treaty, if the government takes the initiative, Parliament must give its approval to reservations when consenting to the treaty. Parliament itself can propose reservations or amend the terms of those initiated by the government. The government can only ratify the agreement in the terms authorised by Parliament. In relation to other treaties, the government decides on the reservations. Similar procedures apply to the withdrawal of reservations.

In relation to reservations or interpretative declarations, the rule in *Switzerland* is that the Federal Council (that is the executive) will propose them. However, the Federal Assembly has powers to introduce reservations or declarations of its own, to request the amendment of reservations proposed by the Federal Council, and even to qualify its approval of a treaty by insisting on a condition that the Federal Council makes certain reservations on ratification or accession. Where an international treaty has been duly approved by Parliament, the Federal Council may withdraw reservations only with the authorisation of Parliament.

Treaty-making in the *United States* under the procedures contained in Article II, Section 2 of the Constitution, gives a role both to the executive and to the Senate in relation to reservations. If the President believes that reservations should be made in respect of a particular treaty, he will indicate that intention in the report which accompanies a treaty when it is submitted to the Senate for advice and consent to ratification. Even if the President does not request a reservation, the Senate may decide that a reservation should be made. In the latter situation, the President is bound to make the reservation if he decides to ratify the treaty. When it comes to withdrawal of reservations, it would appear that the better view is that where the Senate has given its advice and consent to a treaty including a reservation, the Senate should authorise withdrawal of that reservation. If the Congress has authorised an executive agreement, it may likewise condition such authorisation upon certain reservations on the occasion of signature or acceptance.

Section V - Provisional application

The problems presented by provisional application of international treaties for domestic legal systems can be complex. In some domestic legal systems the decision to apply a treaty provisionally at the international level will not raise particular difficulties. Thus, in states which adopt the substantive incorporation approach, that is those which see a clear separation between domestic and international law (that is the countries following the Westminster or the Nordic tradition and, to some extent, the *Czech Republic*; see below – Section VI), a treaty can only be applied provisionally in so far as it does not require a change in the law.

On the other hand, some constitutions which though in principle permit provisional application, will impose limitations in order to prevent any undermining of the normal rules for integration or incorporation of international agreements into the domestic legal system (*Andorra, Belgium, Germany, Hungary, Italy, Japan, Lithuania, Netherlands, Romania, Slovakia* and *Turkey*). However, there are other states, which allow for the possibility of

provisional application of treaties. For example a number of the east European states have enacted special treaty statutes that *inter alia* deal with this question.

1. Legal systems in which provisional application is generally permissible

Many of the former communist countries of central and eastern Europe demonstrate their awareness of modern treaty techniques by allowing for provisional application of international agreements. As most of those states usually implement international treaties by way of automatic integration and many of them give treaties a superior rank to domestic statutes (for further details see below – Section VI) provisional application would only really cause problems if it conflicted with a constitutional provision.

Accordingly, *Albania, Azerbaijan, Estonia* and *Georgia* are all expressly permitted to apply a treaty provisionally by their respective statutes. In *Croatia* and *Slovenia,* the Government or, as the case may be, the Parliamentary Committee for International Relations, permits provisional application when an initiative to conclude a treaty is under discussion. Similarly in *Croatia*, provisional application should be specifically discussed and approved in each particular case in the formal decision to initiate the treaty-making process. Although provisional application is not explicitly provided for in the law of the *Ukraine*, it can be done in practice.

The *Russian Federation* takes a special approach with regard to provisional application. Although provisional application seems to be possible in principle, the decision has to be submitted to the Duma no later than six months after provisional application has begun, where the treaty requires ratification. The decision on the provisional application of such a treaty beyond a six-month period is taken in accordance with the ratification procedure, in the form of a federal law (Article 23, Law on International Treaties).

Also a number of western states are generally open to provisional application. Although the provisional application of a treaty is not expressly provided for in the Constitutions of *Finland, Greece* and *Liechtenstein*, it would appear to be possible in practice on the initiative of the government. In *Liechtenstein,* the explicit consent of the Prince is required.

Similarly *San Marino* derives the possibility of provisional application from the fact that the legal system does not contain any provision preventing the temporary application of a treaty that has not yet entered into force.

The laws of *Spain* do not expressly provide for the possibility of provisional application of international agreements. Yet it is implied in Decree 801/72, which requires the official publication of the treaty in Spain before its entry into force, where agreement has been reached on its provisional application. The date of entry into force or the date on which the provisional application expires must be published subsequently.

By virtue of its powers and responsibilities in the field of foreign policy, the Federal Council in *Switzerland* may order the provisional application of an international treaty when the protection of the national interest is at stake. Alternatively, treaties may be applied provisionally where the particularly urgent nature of the situation makes application necessary before the end of the usual parliamentary approval procedure. In urgent matters the Federal Council may also decide to apply a treaty on a provisional basis even though the conditions for its entry into force have not been met.

The situation in the *United States* is somewhat similar to that in Switzerland. The decision as to whether or not to apply a treaty provisionally falls within the President's authority, although objections might be raised by the Senate where the treaty is pending before it. In respect of executive agreements that do not enter into force upon signature, provisional application may be made between the period of signature and the date of entry into force of the agreement unless the agreement requires implementing legislation.

2. Provisional application subject to the rules of domestic law

Other states also accept the possibility of provisional application of international treaties, but subject it to the usual constitutional requirements for the implementation of international treaties or to the procedural and/or substantive rules of the law-making process. This approach is generally undertaken by the *United Kingdom, Australia, Canada, Malta, Israel, Ireland, Sweden, Norway, Denmark, Iceland, Poland* and the *Czech Republic*. Hence, in those states, provisional application seems only possible if either the agreement does not require incorporation by statute or the necessary legislation is already enacted at that early stage.

In some states, the safeguarding of parliament's legislative capacities is express. Thus in *Andorra, Belgium, Germany, Hungary, Italy, Japan, Lithuania, Netherlands, Romania, Slovakia* and *Turkey* treaties must not be applied provisionally if they refer to matters reserved for statutory regulation or if the requirements for parliamentary approval would be circumvented.

When a treaty is provisionally applied in *Andorra* it must have parliamentary approval in accordance with Article 64 (1) of the Constitution. If, from the point of view of domestic law, a treaty requires statutory enactment it cannot be applied provisionally without the necessary legislative steps being taken.

In *Belgium*, provisional application (which is an exception) cannot produce effects in the domestic legal order before parliamentary approval. With regard to other agreements, provisional application is allowed. In *France,* provisional application of a treaty is not possible where in accordance with article 50 of the Constitution, its ratification or approval is subject to parliamentary authorisation.

In *Germany,* provisional application of a treaty prior to its entry into force is permissible in so far as the domestic requirements for incorporation are met. Hence, treaties may be applied provisionally only to the extent that they can be implemented by the executive authorities alone. In other respects they may not be applied prior to the granting of the necessary consent by the legislature.

Likewise in *Hungary,* provisional application of treaties must be consistent with domestic law whether, whether procedural or substantive.

Provisional application in *Italy* is only possible in relation to agreements in simplified form, which have been concluded in accordance with informal procedures. In other cases, it is generally excluded before the parliamentary consent necessary for the conclusion of treaties is obtained.

If a treaty is sought to be provisionally applied by *Japan*, consent of the Diet is required if the ordinary process of incorporation would be subject to parliamentary approval. Other agreements which fall within the competence of the Cabinet can be applied before their entry into force but should be reported to the Diet.

Treaties can be provisionally applied in *Lithuania* unless they conflict with domestic law.

In the *Netherlands,* treaties can be applied provisionally without subjecting them to formal approval procedure, to the extent that the obligations which the government has to fulfil as a result of provisional application, are within its existing competence and do not require the co-operation of Parliament.

In *Poland,* provisional application of treaties is possible, although it is not expressly provided for by law. Treaties may be applied provisionally only to the extent that they can be implemented by the executive authorities alone. In other respects they may not be applied prior to ratification.

In *Romania,* parliamentary approval would be required for provisional application if the treaty itself requires the consent of Parliament. The situation is the same in the *Slovak Republic*.

In *Turkey,* provisional application of a treaty before its ratification is exceptional, though possible, but only where the provisions of the treaty are consistent with the existing legislation and authorisation by the Parliament to ratify is not necessary. In other cases it must go through the normal parliamentary procedures of treaty-making.

3. Provisional application generally excluded

In none of the states under consideration do the respective Constitutions explicitly exclude provisional application of international agreements. However, in the answers given to the questionnaire *Austria, Luxembourg, "the former Yugoslav Republic of Macedonia", Mexico* and *Portugal* reveal that they do not accept provisional application of international agreements in their respective national legal systems.

Section VI - The place of treaties in domestic law

The conclusion of an international agreement primarily results in obligations for the States Parties at the international level. The parties will generally enjoy a discretion as to how they will implement their international obligations. The proper implementation of treaties is clearly an imperative for the international system, and has become increasingly complex, as international law has expanded into fields formerly occupied purely by national law. Thus while alliances, arms control treaties and agreements on political co-operation by their nature will largely only operate at the interstate level, treaties on matters of private law, on industrial and commercial property, on matters of jurisdiction, on criminal law and extradition and above all treaties on human rights must be introduced into and co-ordinated with the national legal system.

The question as to how exactly a treaty will affect the domestic legal systems of the States Parties will largely depend on their constitutional approaches towards international law. There appear to be three basic forms:[48]

1. Treaties might become operative in national law automatically, following their ratification, entry into force and, usually, promulgation in the official gazette, without further legislative action being required ("automatic integration"),
2. In other states, if a treaty is to become part of the national legal system this will require a prior domestic act. That domestic act may be done by the legislature or the executive, but in either event the act itself is of a formal or procedural nature, rather than having substantive normative effect in itself. These systems recognise the normative effect of the treaty itself in national law ("formal incorporation"),
3. Alternatively the treaty may in itself have no legal effect within the national legal system, but can only be incorporated in accordance with the law-making procedure of national legal system. Therefore a substantive legislative act will be required to implement the treaty, where this is necessary to fulfil the state's international obligations ("substantive incorporation").

The precise process of implementation is of particular importance in relation to treaties, which oblige states to grant individuals rights, which they can enforce directly in the national legal system. Only the first two approaches to incorporation (mentioned above), in which the treaty itself will have effect in domestic law, are open to the possibility of treaties being "self-executing" or "directly applicable". In contrast, those states which adopt the substantive incorporation approach will not give effect to the agreement as such, but always a provision of domestic law. Hence, the international agreement itself will not be directly applied in the domestic legal system.

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[48] Francis G. Jacobs, "The effect of treaties in domestic law*"* (1987), p. XXIV; J. A. Frowein/K. Oellers-Frahm, in: P-M. Eisemann (ed.), *L'Intégration du droit international et communautaire dans l'ordre juridique national* (1996), p. 12.

In order that a treaty should maintain its full effectiveness after its incorporation into the national legal system, some legal systems will give it an enhanced status over rules of domestic law. In practice, it is in the countries which follow the automatic integration approach that the position of treaties is strengthened in this way.

In most countries, the rules governing the place of treaties in domestic law, including both their effect and their rank, will be governed by provisions of the constitution. In many western European states, the constitutional provisions are supplemented by long-established practice, from which clarification and further development of the rules can be derived. In contrast, in many of the former communist countries in central and eastern Europe, these matters are contained in new constitutional provisions. As the interpretation of the rules on the place of treaties in domestic law is not firmly established yet and because practice has had limited time in which to develop, an authoritative statement and analysis of the legal position is not possible in many cases.

1. Forms of incorporation

The three approaches towards the implementation of treaties indicated above are, of course, the result of a categorisation of the salient features of pre-existing arrangements. As such they have developed without reference to such categorisation and so there is inevitably an element of approximation in assigning particular countries to one category or another. The categories are intended to assist in understanding of the systems under consideration, but the theoretical clarity of the distinctions between them is often clouded when applied to practical examples. Thus the distinction between the first and second categories, and between the second and third categories will depend upon the characterisation of parliament's role in the treaty-making process. Between the first and second categories, problems might arise in situations where parliament expresses its approval in the form of legislation rather than a resolution. Between the second and third categories where the relevant parliamentary or government act is in the form of legislation, it may be difficult to distinguish whether the relevant act is purely procedural or has the character of ordinary legislation, that is substantive incorporation.

These difficulties are borne out by the experience of national courts and other state organs, which in some cases have changed their characterisation of the constitutional methods of incorporation.[49] However the characterisation of the relevant acts has important consequences, not least in relation to the issues of self-execution and direct applicability (see below subsections 2 and 3).

Examining the approaches followed by different groups of states, the Westminster tradition is striking for its requirement of subjecting international obligations to the full rigour of the domestic law-making process, though a similar approach is also pursued by the Nordic countries. It might be contrasted with the formal openness of the former communist states in central and eastern Europe to international law, which usually do not require substantive incorporation.

a. Automatic integration

In this category, a treaty which has been approved by the state and which has entered into force on the international plane automatically becomes part of the law of the state, without any separate act of incorporation being required. Usually publication at the national level will be necessary. Some of the western European states (*Andorra, Belgium, Cyprus, France, Liechtenstein, Luxembourg, Netherlands, Spain, Switzerland*) and apart from the Slovak Republic all of the former communist countries in central and eastern Europe follow this approach.

[49] For example in *Germany,* the Constitutional Court has changed its interpretation of the statute of approval from substantive to formal incorporation, BVerfGE 46, 342 (363); similarly in *Greece,* the character of the Parliamentary act of approval was subject to long-term controversy, which was only settled by the revision of the Constitution in 1975.

The Constitution of *Albania* states, in Article 122, that every ratified international agreement constitutes a part of the internal legal system after its publication in the official gazette of the Republic. Likewise in *Andorra,* treaties become an integrated part of the legal system from the moment of publication (Article 3 (4) of the Constitution). Similarly in *Azerbaijan* treaties, which are ratified, in force and duly published are considered to be part of the system of domestic legal order (Article 148).

If *Croatia* has ratified a treaty, the treaty becomes part of the Croatian legal system as soon as it enters into force and is published in the official gazette (Article 134). Treaties concluded by *Cyprus* are integrated into the national legal system under the similar conditions (Article 169 of the Constitution), as are treaties concluded on behalf of *Estonia.*

In the *Czech Republic,* the method of implementation depends on the character of the treaty. International treaties on human rights and fundamental freedoms in accordance with Article 10 of the Constitution are automatically integrated into the domestic legal order once they have been ratified and entered into force. While other treaties will take a different form of incorporation (see below under 3).

Treaties to which *France* is a party are automatically incorporated into the domestic legal system**,** thus no special act is necessary once the international and domestic legal procedures for the conclusion of international treaties are completed. Parliamentary approval takes the form of a law, which does not aim at integrating the treaty or agreement in the domestic legal order but at authorising ratification or approval. The text must be published in the official gazette (*Journal officiel*) for individuals to be able to rely on it in the domestic legal order and to be valid *vis-à-vis* third parties.

When *Georgia* enters into a treaty, it automatically becomes a part of the Georgian domestic legal system (Article 6 of the Constitution and Article 6 of the Law on International Treaties). If *Hungary* becomes a party to a treaty and the agreement is published in the official gazette, it is *ipso jure* incorporated into domestic law.

In *Liechtenstein,* treaties are incorporated into the domestic legal system without the need for any further implementation. However before a treaty can give rise to rights and duties in respect of individuals it must be published in the national legal gazette.

Article 138 (3) of the Constitution of the Republic of *Lithuania* provides that international agreements, which are ratified by the *Seimas* of the Republic shall be a constituent part of the legal system of the Republic of Lithuania, provided they have entered into force.

If a treaty is in force, it is integrated into the law of *Luxembourg* by the international expression of consent to be bound, followed by publication in the official gazette. Similarly in *"the former Yugoslav Republic of Macedonia"* all treaties become incorporated into domestic law on their promulgation (Article 118 of the Constitution). With regard to treaties concluded by *Mexico,* it is thought that they are automatically part of domestic law. In the *Netherlands,* a treaty will automatically become part of the Dutch legal order on its conclusion, provided its text has been published in the treaty series of the *Netherlands*.

Under Articles 87 and 91 (1) of the Constitution of *Poland,* treaties ratified by Poland become part of the legal system once they have been published in the *Dziennik Ustaw*. Likewise, by virtue of Article 8 (2) of the Constitution, treaties concluded by *Portugal* and subsequently published in the official gazette become an integral part of the law as soon as the treaty enters into force.

Treaties ratified by *Romania* are part of the national legal system under Article 11 of the Constitution.

In *the Russian Federation* a treaty is incorporated into domestic law at the time of its entry into force. No separate incorporating act of legislative or administrative authority is necessary (Article 5 of the Law on International Treaties).

A treaty concluded by *Slovenia,* which has entered into force, is incorporated by promulgation and publication in the official gazette Similarly a treaty to which *Spain* has consented at the international level, and which has entered into force, is part of the domestic legal system, provided the agreement has been officially published (Article 96).

International treaties concluded by *Switzerland* form an integral part of Swiss domestic law as soon as they enter into force, without any need for a special act incorporating them or any particular publication requirement.

Treaties to which *Turkey* is a party are automatically integrated into the Turkish legal system (Article 90 of the Constitution). Similarly international treaties become an integral part of the law of *Ukraine* upon ratification at the international level (see Article 9 of the Constitution).

b. Formal Incorporation

In this category, an international treaty will have no effect in the national legal system until its incorporation by a legislative or executive act. However, once the necessary parliamentary approval has been given or the executive order been made, a treaty has full legal effect. The difference between this and the first category is that, in these systems, the international obligation is re-clothed as a domestic statute or an administrative regulation. However, it is sometimes difficult to identify whether states adopt automatic integration or formal incorporation, as can be seen from the example of *Austria*. In some other cases, there are similarities with substantive incorporation, as can be seen by the example of *Finland*. With the exception of the *United States*, which has developed rather special structures in the field of treaty-making, countries in this group generally follow a particular continental civil-law tradition.

In *Austria,* treaties are implemented into domestic law by a general incorporation order embodied in the act of promulgation (that is publication). Though from a formal perspective, the system displays some common characteristics with national systems which take the automatic integration approach, the requirement of promulgation to give a treaty effect in Austrian law in fact suggests that it is closer to the formal incorporation approach.

Treaties signed by *Belgium* are incorporated into domestic law, provided they have entered into force on the international plane and have received internal approval (by means of a law, a decree, or instructions adopted by the parliament concerned). Publication of treaties concluded by Belgium in the *Moniteur belge* is, however, required in order to make them valid *vis-à-vis* third parties.

In *Finland,* which of course adheres to the Nordic tradition, agreements concluded on its behalf do not automatically become part of the Finnish law. Under Article 95 of the new Finnish Constitution, the provisions of treaties and other international obligations, in so far as they are of a legislative nature, shall be implemented by an act of Parliament. Other international obligations shall be implemented by a decree issued by the President of the Republic.

The situation in *Germany* reveals the problem of delimiting formal and substantive incorporation. An international agreement will become an integral part of the German legal system once it has been ratified and is in force, where it has been approved by Parliament or, depending on the contents of the treaty, is the subject of an administrative order (Article 59 (2) of the Basic Law). If parliamentary consent is required under Article 59 (1)(2) of the Basic Law, the act of approval usually fulfils a dual function. It authorises presidential ratification and, at the same time, implements the agreement into the domestic legal order. After a long-running controversy as to whether parliamentary approval or executive order would amount to formal or substantive incorporation, the German Constitutional Court has recently characterised those acts as “special application orders”[50] and has therefore ruled in favour of formal incorporation.

[50] BVerfGE 46, 342 (363); 90, 286 (364).

The situation in *Greece* is similar. Parliamentary consent required by Article 36 (1) of the Constitution has a dual effect: it authorises the head of state to ratify and, secondly, as the act of approval takes the form of a statute, it incorporates the treaty into the domestic system. In parallel with the developments in Germany, it has been established that parliamentary approval or executive decision to conclude a particular agreement cannot be considered to effect substantive incorporation but rather fulfils formal functions.[51]

Also in *Italy,* the legal effect of a treaty in domestic law requires a legislative act through which the agreement is incorporated into domestic law. Depending on the contents of the agreement, incorporation may be brought about by a constitutional law, by an ordinary law, a presidential decree or an administrative act. The necessary state act is drawn up in accordance with two procedures: either the special (or reference) procedure, which consists of an implementation order stating that the treaty is to be implemented and applied within the country without any change in domestic law (often the phrase "the treaty shall be fully implemented" is used); or alternatively the ordinary procedure, which leads to substantive legislation, or administrative act, incorporating the relevant treaty obligations. The choice of procedure depends on the nature of the agreement to be incorporated.

The Constitution of *Japan* does not reveal which implementation method is followed with regard to international agreements. If approval of the Diet is required or alternatively the treaty is sanctioned by Cabinet decision the actions seem to be of a dual nature. Completion of the legislative procedure or of the decision-making process in Cabinet, will lead to authorisation of entry into the treaty at the international level. At the same time, the promulgation of legislation or of an administrative decision, contains the implementation order for the purposes of national law. Consequently, treaties become effective in Japanese domestic law after the treaty enters into force on the international level.

Under the system of the *Slovak Republic* where the treaty contains provisions which are not in conformity with existing laws and regulations, it must be the subject of a separate administrative act and, in any event, publication in the official collection of laws. To the extent that an administrative act is required, the system appears to belong to the formal incorporation category.

Under Article VI, Section 2 of the Constitution of the *United States of America* all treaties entered into in accordance with Article II, Section 2 become part of the supreme law of the land. Hence, the consent of the Senate effects incorporation. If the President is enabled by the Congress to conclude an executive agreement or does so by virtue of his own authority the respective agreement is likewise incorporated into federal law.

c. Substantive incorporation

In the third category of states, the effect of a treaty depends on the process of substantive incorporation. The treaty itself has no effect in national law, and it is only given effect by the national act which incorporates it. Usually three alternatives are available: *a* the required legislation or administrative act may be enacted without express reference to the treaty, by means of an ordinary statute by parliament or an order of government; *b* where the state can meet its international obligations without the need for any new legislation or executive act, no implementing act is required; *c* the relevant act of parliament or the executive might serve two functions, approval within the treaty-making process and also incorporation of the treaty into domestic law. In this last situation in particular distinguishing the substantive incorporation approach from the formal incorporation approach can prove to be delicate.

The group of states firmly following the substantive incorporation requirement includes the countries following the Westminster tradition and Nordic states. Additionally, the *Czech Republic* applies that doctrine to the majority of treaties it concludes. While the Westminster countries usually separate implementation action from authorisation and conclusion of the

[51] E. Roucounas, in P.-M. Eisemann, *op. cit.*, p. 297.

treaty at the international level, the Nordic states often combine the incorporating act and the decision of authorisation.

The Westminster tradition originates in the *United Kingdom*. A treaty has no effect in English law unless the contents of the agreement are incorporated into domestic law by means of primary and/or secondary legislation. The treaty may form part of the body of the text of a Statute or simply be annexed thereto. In practice, the strictures of the rule that treaties will have no effect in English law without incorporation by legislation, are to some extent mitigated by a rule of statutory interpretation, that where a legislative provision is ambiguous, it will be construed so as to comply rather than conflict with the international obligations of the United Kingdom.[52]

The basic approach of the Westminster tradition is similarly adopted in the Commonwealth countries of *Australia, Canada* and *Malta,* and also by *Israel* and *Ireland* as a consequence of their historical links with Britain.

The Nordic tradition essentially consists of *Denmark, Sweden, Norway* and *Iceland*. Like the states following the Westminster tradition, those countries require an act of substantive incorporation in order for international contractual obligations to become a part of domestic law.

While international human rights treaties are automatically integrated into the legal system of the *Czech Republic,* all other agreements require substantive incorporation in order to be given domestic legal effect. Hence, the content of those treaties must be included in specific domestic legislation. In most situations, the relevant legislation will substantively re-enact the relevant provisions of the international agreement.

2. Self-executing treaties

In countries of the first and second categories, a discussion may take place as to whether a treaty is self-executing. This phrase is open to much controversy. It appears to originate in the notion of "completeness" of the obligations contained in the treaty, that is on their face, do the terms of the treaty require states to take any further action to implement the obligations thereunder? Or, are the obligations, which the treaty contains, perfected in that they may be applied by the national courts without need of further legislation?[53]

The term is used in both the United States and some continental systems. However, despite having similar origins in the notion defined above, United States doctrine and jurisprudence now appears to diverge from continental approach. In the United States, the original notion of self-execution has now taken on the question of whether the treaty is capable of creating rights and duties, which the individual may enforce directly in national courts.[54]

Whereas from the continental perspective, an agreement has self-executing effect if it is legally operative in the domestic legal order without additional legislative action.[55] In these countries, self-executing effect of an international agreement depends on the contents and nature of the treaty under consideration. The treaty must be capable of being a constituent part of the domestic legal system and must have the qualities of a domestic legal statute or administrative order. This is generally not the case with regard to highly political treaties such as alliances, border agreements, arms control and peace treaties.

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[52] For example, Lord Diplock in *Black-Clawson International Ltd v. Papierwerke* [1975] AC 591, pp. 640, 641.

[53] An early definition of self-execution was delivered by the US Supreme Court in *Foster v. Neilson*, 2 Pet. 253 (U.S. 1829). The approach was confirmed in the Head Money cases, 112 U.S. 580 (1884), and it also shared by the Restatement (Third) of the Foreign Relations Law of the United States (1985), § 111, comment *h*.

[54] For example, *Mannington Mills, Inc. v. Congoleum Corp*., 595 F. 2d 1287 (3rd Cir. 1979), *Comm. of United States Citizens Living in Nicaragua v. Reagan*, 859 F. 2d 929, 937 (1988); see also S.A. Riesenfeld/ F. M. Abott,. *Parliamentary Participation in the Making and Operation of Treaties: A Comparative Study* (1994), p. 263.

[55] Compare F. Jacobs, *op.cit*., p. xxvii.; J. A. Frowein, *id.*, p. 71; A. Aust, *op. cit*, p. 159; L. Wildhaber, in, S.A. Riesenfeld/ F. M. Abbott, *op. cit.*, p. 140.

Theoretically the self-executing nature *vel non* of a treaty in each case appears to depend on proper interpretation of the intent of the contracting parties to be derived from the language and purpose and the specific circumstances of the agreement.[56] If a treaty clearly envisages implementing legislation, it will not be self-executing.

Interestingly, in the practice of the *United States* self-executing effect of a particular treaty can be excluded by a declaration of the Senate attached to the act of consent.[57] As a result, the treaty shall not be a direct source of law in the United States.

Finally it should be remembered that in the countries following the Westminster tradition and in the Nordic countries (apart from Finland), international agreements can never have self-executing effect. International agreements concluded by the *United Kingdom, Australia, Canada, Malta, Israel, Ireland, Denmark, Sweden, Norway,* and *Iceland* always require legislation or administrative action in order to be executed in domestic law. Similarly, most treaties of the *Czech Republic* require implementation at the national level; the exception being international human rights treaties which follow a special procedure laid down in Article 39 (4) in combination with Article 10 of the Constitution, and which are always self-executing.

3. Direct applicability

Where an agreement is self-executing, it may also be directly applicable, that is, under the treaty an individual has the right to rely directly on one of its provisions on his own or on behalf of another before national courts.[58]

The question of "direct applicability" does not arise in relation to political agreements, which exclusively address the rights and duties of the participating states. However, if the treaty seeks to confer rights and duties directly upon the individual, it may be directly applicable if the application of the agreement does not require further implementing legislation and the provisions of the agreement have clear and precise contents. Often national constitutions require publication in the official gazette as an additional precondition for direct applicability.

The Constitution of the *Czech Republic* is unique in that it explicitly provides for the direct applicability of international human rights treaties. Though the constitutions of other countries may be silent on the point, it seems that in principle direct applicability is no problem within countries, which follow the automatic integration approach to treaties, and probably not in relation to formal incorporation.

In countries, which follow the substantive incorporation approach to international treaties direct applicability will generally be excluded. Hence, in the *United Kingdom, Australia, Canada, Malta, Israel, Ireland, Denmark, Sweden, Norway, Iceland* and in the with the exception of human rights conventions also in the *Czech Republic* treaties are not directly applicable.

A similar problem arises in the context of European Union law in relation to the concept of "direct effect". Provisions of EU law may have direct effect, if they are "clear, unconditional, containing no reservation on the part of the member state, and not dependent on any national implementing measure" as determined by the European Court of Justice.[59] Whilst for other European Union states direct effect in itself does not raise undue technical problems, for the *United Kingdom, Ireland, Denmark* and *Sweden* special legislative mechanisms have had to be enacted.

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[56] According to the ruling of US courts in *Frolova v. USSR.,* 761 F. 2d 370, 373 (7th Cir. 1985), *Tel-Oren v. Libyan Arab Republic*, 726 F. 2d 774 pp. 778, 808 (D.C.Cir. 1984).

[57] Restatement (Third), § 303, comment *d*. Accordingly the US has made a declaration that the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the Convention against Torture respectively are not self-executing.

[58] Compare Frowein, in Eisemann, *op. cit.*, p.17.

[59] Case 26/62*,van Gend en Loos*, [1963] ECR 1; case 6/64, *Costa v. ENEL* [1964] ECR 585.

Accordingly, section 2 of Statute No. 447 of 11 October 1972 on *Denmark*'s accession to the European Union provides that EU law is directly applicable in Denmark as far as European Union law so requires. Similarly, in *Ireland* section 2 of the European Communities Act 1972 states that the Treaties establishing the European Union and the acts adopted by the institutions in accordance with those Treaties, are part of the domestic law under the conditions laid down by those treaties. In the *United Kingdom,* section 2 (1) of the European Communities Act 1972 provides that rights and obligations which are created or otherwise arise under the treaties establishing the communities, and which have direct effect in EU law, will also be directly applicable in United Kingdom law**.** A corresponding provision also appears in paragraph 2 of the 1994 law on *Sweden*'s accession to the European Union.

4. Hierarchy of norms

If an international agreement becomes part of a domestic legal system, the question arises as to what place to give it in the hierarchy of norms. Giving a treaty an enhanced rank within the national system may be a means of further strengthening the effect of the treaty. However the issue of the rank of international treaties only arises in systems, which either automatically integrate international agreements into domestic law or formally incorporate them.

The problem does not arise in states which require substantive incorporation, since they require incorporation by means of ordinary legislation. Therefore with regard to the countries following the Westminster tradition and the Nordic states the question of rank and effects of international obligations in domestic law has mainly occurred when it comes to the implementation of the Treaty of the European Community. Hence, the discussion on the *United Kingdom, Australia, Canada, Israel, Malta, Ireland, Sweden, Norway, Denmark*, *Iceland* and (with the exception of human rights conventions) in the *Czech Republic* will be limited accordingly.

Those states which automatically integrate international treaties into the domestic legal systems or incorporate them formally will usually enjoy some discretion in determining their rank in the domestic legal sphere. Accordingly, the position of a treaty in the hierarchy of legal norms varies to some extent from state to state. In some states the treaty has the same status as national law. In other states, a treaty is given superior legal force over national legislation, whilst in exceptional cases, states may give precedence to international treaties over constitutional law. Additionally, the ranking might depend on the contents of the treaty under consideration, that is whether it includes substantive legal provisions affecting constitutional law or simply makes administrative regulations.

In general, a tendency may be observed that states are increasingly willing to open their constitutional and legal systems to the influence of international law. The new constitutions of the former communist countries in central and eastern Europe often emphasise the importance of international agreements by assigning them a higher rank than that of domestic statutes. Even those states which do not consider international treaties to take precedence over domestic legislation will at least seek to interpret the national laws in conformity with international obligations.

It might be noted that analogous questions have arisen for the European Union member states in the Community law principle of the supremacy of community law. The problems that this has presented for member states are complex and go beyond the scope of the present study.

a. Constitutional rank

In *Austria* and *Mexico* international treaties may be given the status of constitutional law, though this will depend on their contents and certainly other less significant agreements will have a lower status. In the *Czech Republic,* Human Rights Conventions will have the force of constitutional law. While it appears that in the *Netherlands* directly applicable treaties, duly ratified and enforced, may even take precedence over the Constitution (Article 94).

b. Superior to legislation

In most of the countries under consideration, certain kinds of international agreements enjoy a higher position than ordinary law but are always subject to constitutional provisions. Strikingly, in many of the former communist countries in central and eastern Europe, treaties are often given a higher rank than ordinary legislation (*Albania, Azerbaijan, Croatia, Georgia, Poland, Romania, Slovenia*), though there are some exceptions (*Estonia, Lithuania, "the former Yugoslav Republic of Macedonia", the Russian Federation*, and the *Slovak Republic).* Among the other states *Cyprus, Greece, Japan, Portugal, Spain* and *Switzerland* accept the superiority of treaties, or at least some categories of treaties, over ordinary legislation. In *France*, all applicable treaties enjoy higher position than ordinary law.

Under Article 122 of the Constitution of *Albania,* international agreements take precedence over domestic laws. The reply to the questionnaire states that international treaties, which have been incorporated into the domestic law of *Azerbaijan,* have a higher status than ordinary law. Similarly, Article 134 of the Constitution of *Croatia* provides that treaties concluded by Croatia, which have been approved by Parliament, constitute the category of treaties that are superior to the internal statutory law. In *Cyprus,* Article 169 (3) of the Constitution states that any treaty concluded in accordance with the Constitution has, as from its publication in the official gazette of the Republic, superior force to any municipal law on condition that such treaty is applied by the other party thereto. If *Georgia* concludes an international agreement, it can take precedence over domestic legal acts once it has entered into force (Article 6 of the Constitution; Article 19 of the Law on International Treaties). International treaties which have been concluded with the approval of the legislature on behalf of *Greece* have a higher status than ordinary laws (Article 28 (1) of the Constitution).

Treaties concluded by *Japan* are legally superior to domestic law, if they have obtained the approval of the Diet. The Constitution of *Poland* provides in Article 91 (2) that treaties ratified by the President with the authorisation of the Parliament take precedence over statutory law if the statute cannot be interpreted in a manner that complies, or is reconciled with the treaty.

The position of international agreements in the legal system of *Portugal* is not defined in the Constitution and consequently not entirely clear. However the prevailing opinion, gained from the answers given to the questionnaire and elsewhere,[60] is that they have superior legal status and prevail over ordinary law but are subject to the Constitution.

In *Romania,* treaties relating to human rights and fundamental freedoms take precedence over domestic laws under Article 20 of the Constitution. The status of international agreements concluded by *Slovenia* depends on whether they have the form of statutory provisions in which case they take priority over domestic statutes. If, however, they are only given the form of regulations, they will rank between statutes and regulations.

Under Article 96 of the Constitution, treaties concluded by *Spain* will enjoy supremacy over any internal regulation of lower rank than the Constitution. In the absence of explicit provisions, constitutional practice in *Switzerland* accords international agreements a rank superior to that of domestic legislation, although the Federal Court will primarily seek to interpret the legislation in a manner that complies with the treaty.

In *France*, under Article 55 of the Constitution, treaties and agreements duly ratified or approved have a higher rank than law from the moment of their publication, though conditioned upon mutuality for each individual agreement or treaty.

c. Ordinary legislation

If neither the provisions of the constitution nor court practice have developed special rules, treaties incorporated by statute will generally have the same rank as national legislation. Alternatively, the constitution may expressly provide that treaties have the rank of ordinary legislation. In these situations a treaty will prevail over a conflicting subordinate norm,

[60] See R.M. Moura Ramos, in Eisemann, *op. cit*, p. 476.

whether prior or subsequent to the treaty, but it will not necessarily take precedence over a conflicting subsequent statute since, regardless of the method of incorporation, a treaty which has the same rank as ordinary legislation may be subject to the principle *lex posterior derogat lex priori*. However, states will seek, as far as possible, within the rules of statutory interpretation, to construe national legislation in accordance with their international obligations.

The states which automatically integrate treaties into the domestic system with the status of ordinary legislation are *Estonia, Liechtenstein, Luxembourg, "the former Yugoslav Republic of Macedonia", Romania, the Russian Federation, San Marino, Turkey*, and the *Ukraine* (with the exception of human rights treaties, which are of higher rank).

In *Finland, Germany, Italy, the Slovak Republic* and the *United States,* a majority of the states which implement international agreements by formal incorporation, the rank of treaties which are formally incorporated is that of ordinary legislation.

Usually in *Germany,* the implementing act will**,** in most cases, have a federal character, regardless of the fact that the *Länder* might be otherwise competent in relation to the subject-matter of the legislation. Only if the *Länder* themselves have made use of their treaty-making competence and accordingly concluded international agreements (see supra - Section II) can those agreements be implemented by the laws of the *Land*. Under the domestic rules of statutory hierarchy, federal legislation implementing international agreements takes precedence over all laws of the *Länder* (Article 31 of the Basic Law).

Although in *Italy* the status of an international agreement generally corresponds to that of the legislative act through which it is incorporated into domestic law, both legal opinion and domestic case-law, by way of interpretation, consider that it has greater force than other domestic sources of the same status.[61]

Under Article VI, Section 2 of the Constitution of the *United States,* international treaties concluded by the United States are considered to be part of the Supreme Law of the Land. Consequently, they are superior to state law, while they have equal status to other provisions of federal legislation. Article VI, Section 2 formally only applies to treaties concluded in accordance with Article II, Section 2, however it has been interpreted by the Supreme Court as also applying to executive agreements.[62] Cases of inconsistency between a treaty and a statute will be resolved by means of the *lex posterior* rule. The effect in domestic law of an executive agreement made by the President under his own constitutional authority on an earlier treaty or a federal statute has not been established. Though this is still controversial, it is thought that an executive agreement is not capable of superseding an earlier treaty or act of Congress, but will enjoy priority over inconsistent state law.

Conclusion

The question raised in the introduction related to the ways in which democratic states might strike a practical balance between the need for effectiveness and flexibility in the conduct of foreign policy on the one hand, and the principles of transparency and democratic accountability in the field of treaty-making on the other. The analysis shows that it is not possible to identify a single, exclusive, means by which this might be achieved. Despite the fact that each of the states surveyed is a democracy, there is a multiplicity of approaches between them. The domestic legal rules relating to the conclusion of international agreements and their implementation do not follow particular models. There may be similarities derived from a common legal tradition, but it is not possible to categorise all the

[61] T. Treves, M. Frigessi di Rattalma, in Eisemann, *op.cit.*, p. 397.
[62] *United States v. Belmont*, 301 U.S. 324 (1937); *United States v. Pink*, 315 U.S.203 (1942); *Calmenetics v. Volkswagen of America, Inc.*, 353 F. Supp. 1219 (D.C.Cal. 1973).

states into particular groups, each following a particular approach. In any event, once one takes the research to certain level of detail, no two states are identical.

Although all of the states under consideration extend standards of democratic government to their rules on treaty-making, the authority of the executive in relation to conclusion of international agreements is still strong and, in most cases, decisive. In all states, negotiation of the text lies in the hands of the executive. Apart from the *United States*, legislatures cannot generally vote on each article of an agreement, nor can they amend the agreement in the way they can in relation to domestic legislation. In most countries, the executive possesses the competence to formulate and accept reservations.

However, the conclusion of international agreements is no longer regarded as exclusively a foreign policy competence of the executive, but increasingly requires some degree of parliamentary involvement. In reality, the precise degree of parliamentary control is difficult to assess on the basis of legal analysis alone, and in any event varies considerably from country to country. In many of the states, the role of parliament has evolved in relation to the their individual circumstances and constitutional history. While in the *United States, the Netherlands* and *Switzerland* extensive parliamentary checks on the powers of the executive are provided for, whereas in the states following the Westminster tradition treaty-making primarily lies in the hands of the government.

In the states of the western hemisphere, the process which might broadly be characterised as “democratisation” of treaty-making, is the result of long-standing processes which depend on the historical and constitutional particularities of each state. For example, a degree of democratic control of treaty-making was realised in the United States Constitution of 1787 which, in Article II, Section 2, provided that the President required the advice and consent of two-thirds of the Senators present in order to enter into treaties. In France, the principle of democratic government was an underlying issue of the French Revolution. Hence, the Constituent Assembly of 1790 agreed that the King should no longer be competent to conclude all treaties: ”It is the legislative body’s duty to ratify peace, alliance or trade treaties; and any treaty will take effect only following such ratification. (…). It is the King’s responsibility to adopt and to sign, with any foreign power, any treaties of peace, alliance or trade, and any other conventions he deems necessary for the welfare of the state, except for the ratification of the legislative body.”[63]

During the course of the twentieth century with the expansion of international law into new fields which were previously the exclusive preserve of national legislatures, a greater involvement of parliament has become inevitable. The principles of democratic accountability and separation of powers establish the basis for parliamentary involvement, particularly where the agreement contains provisions which oblige the state to legislate in the field of domestic law.

In this respect perhaps, the most interesting features of the current survey are the replies from the central and eastern European countries. The position in which they find themselves is particularly challenging, as they are faced with a number of different priorities and yet, in many cases, do not have a long-established democratic tradition by which these might be accommodated.

For many, a first priority has been to establish the democratic principles themselves, whereby executive power can be held accountable by the legislature, the judiciary or other governmental organs. As a result of political change, they have sought to establish democratic government primarily by means of constitutional change. In this process they have also sought to apply such democratic principles to their foreign policy decisions in relation to international treaty-making.

However, at the same time, they are faced with an expanded corpus of international legal regulations which penetrates both more widely and more deeply into the traditional fields of

[63] The Constitution of 1791 Titre III, Chapitre III, Section I, Article 3, and Titre III, Chapitre IV, Section III, Article 3.

national law. Thus, for example, human rights treaties, treaties on the unification of private law, treaties on avoidance of double taxation, and treaties on immigration and nationality all contain rules, which would previously have been within the exclusive jurisdiction of the state, but which are now the subject of international standards which must be incorporated wholesale into the national system.

In short, the central and eastern European states have coped with this challenge in an impressive way. In general, they display a commendable openness to international law, and notably its more modern forms and techniques. Their constitutions often contain rules which clarify the status of international agreements and the extent to which parliament is involved in the process of treaty-making. Moreover, the treaty statutes which, in the absence of rules which have evolved through constitutional practice, serve to provide a detailed and transparent framework for the exercise of treaty-making power.

PART II – COUNTRY REPORTS

ALBANIA

1. Which authority, in your country, is vested with the treaty-making power?

Under Article 3 of the Albanian law No. 8371, date 9 July 1998 "On the conclusion of treaties and international agreements", the treaty-making power is on the President of the Republic and the Council of Ministers, subject to constitutional provisions in force.

Ministries, central institutions and local government bodies have the right to make agreements of a scientific, cultural, educational, technical character etc., within the scope of their field or jurisdiction, after having first consulted the Ministry of Foreign Affairs.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Under the above mentioned law, before the initiation of the negotiations, the respective ministry, central institution or local government body, proposes the level of the delegation for the Albanian side, the time and place where the negotiations are going to take place, after having first consulted the Ministry of Foreign Affairs.

The State representatives who take place in the negotiations, are provided with valid full-powers. The full-powers are issued by the President of the Republic, when the subject of the treaty or agreement is the Albanian State, and by the Prime Minister, when the subject of the treaty is the Albanian Government. In each case the full powers are countersigned by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and to 13 to 15.

   b) if the answer is yes, please reply to question 4 and following.

Yes, the system of Albania draws a distinction between signature subject to ratification, acceptance or approval and signature not subject to ratification.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is possible only if the agreement does not involve a matter, which under Article 121 of the Constitution necessitates its ratification.

5. In what cases is signature subject to ratification required?

According to Article 121 of the Albanian Constitution:

Ratification or denouncing of international agreements from the Republic of Albania is done by law in cases when they deal with: a. territory, peace, alliances, political and military matters; b. human rights and freedoms, as well as obligations of the citizens, as provided for in the constitution; c. membership of the Republic of Albania in international organisations; d. the undertaking of financial obligations by the Republic of Albania; e. the approval, change, completion or abrogation of laws.

The Parliament, by a majority vote, may ratify other international agreements not provided for in paragraph 1 of this article.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The Council of Ministers approves and denounces the agreements which are not subject to ratification, but which contain the approval clause. In the meaning of Article 2 of law no. 8371, date 9.07.1998, approval or acceptance is preceded by signature.

7. In each of the situations mentioned under 3 a) , 4, 5, and 6 , please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The steps to be followed leading to the decision to bind the state are:

- Before signing an international agreement or treaty the interested Ministry has to consult the Ministry of Foreign Affairs, Ministry of Justice and other interested ministries or other institutions;
- When the agreement is to e concluded on behalf of the State or the Government, it is presented by the interested Ministry to the Council of Ministers for approval in principle, accompanied by the opinions of all other relevant interested ministries or bodies;
- The original of the signed agreement, together with an explanatory note and the Council of Ministers' decision for its approval in principle, must be deposited by the interested ministry, to the Ministry of Foreign Affairs, within one month from their signature.
- The Ministry of Foreign Affairs presents to the Council of Ministers the relevant acts for ratification, accession or approval of international agreements and treaties, within one month from their deposit.
- The Council of Ministers, then presents to the Parliament the draft law on the ratification or accession in treaties and agreements containing a ratification or accession clause, or approves the agreements containing an approval clause.

8. When ratification is necessary, please specify:

   a) Which authority is competent to ratify?

The ratification is made by an act of the Albanian Parliament when the subject of the treaty falls under the conditions of Article 121 of the Albanian Constitution. In other cases ratification is made by a decree of the President of the Republic.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No authorisation is needed before ratification.

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

Not applicable.

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Not applicable.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

a) reservations should be made?

Every interested ministry may propose reservations. If the multilateral treaty or agreement is to be signed subject to a reservation, or declaration, the text of reservations or declarations is first approved by the Council of Ministers.

The approval of reservations is made, following the same procedure as that of a treaty's ratification or accession.

b) reservations should be withdrawn?

c) objections should be presented to reservation made by other States?

It follows that the same applies to withdrawals or changes in the text of the reservations. The texts of reservations or declarations eventually made, are included in the instruments of ratification or accession.

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

Yes, every ratified international agreement constitutes part of the internal legal system after its publication in the Official Gazette of the Republic of Albania.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Every ratified international agreement, published in the Official Gazette is directly applicable except when it is not self-executing and its application requires further legislation.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

An international agreement, which is ratified by law, takes precedence over domestic laws that are inconsistent with it.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

In practice, signature of a treaty is followed by ratification. However there is no legal obligation in Albanian law to ratify a signed treaty.

15. Is the provisional application of a treaty before its entry in force possible in your legal system and under what conditions?

The Albanian legal system does not provide for provisional application, but it is occasionally applied in practice.

ANDORRA

1. Which authority, in your country, is vested with the treaty-making power?

Those who negotiate treaties have the authority to conclude them.

Negotiating treaties is the task of the Ministry of Foreign Affairs in co-operation with the ministerial departments responsible for the subject matter of the treaty.

The negotiators must have full authority to represent Andorra. This is vested in them by the Ministry of Foreign Affairs.

Under Section 9 of the Act regulating the Activity of the State in respect of Treaties, of 19 December 1996, however, the Co-princes (the indivisible Heads of State), the Head of government and the Minister for Foreign Affairs have full authority to give their consent on Andorra's behalf at international level.

Andorra's diplomatic Heads of Mission and its Heads of Permanent Representation with international organisations are also fully empowered to give consent on its behalf in the negotiation and conclusion of treaties between Andorra and the countries or international organisations to which they are accredited.

Heads of special missions sent to one or more foreign countries to negotiate and conclude treaties, and the accredited representatives of Andorra at international conferences run by intergovernmental organisations, or within bodies attached to such organisations, are likewise plenipotentiaries of the state.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Under Section 4 of the Act regulating the Activity of the State in respect of Treaties, the government authorises the formal negotiation of treaties.

It transmits information about the negotiation of international treaties to the Co-princes and the Council General (Parliament).

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

This distinction is not explicitly made under Andorra law.

The text of a treaty is adopted through the negotiators' expression of consent to it.

In the case of treaties drafted at international conferences or within intergovernmental organisations or their subordinate bodies, the text is adopted in accordance with the rules of the conference, organisation or body in question.

If, however, a treaty concerns a matter covered by Articles 64(1) or 65 of the Constitution, the Andorra negotiators may only consent to it subject to the Council General's approval.

Treaties require this parliamentary approval if they:

- associate Andorra with an international organisation;
- concern internal security or defence;
- concern the territory of Andorra;
- concern fundamental individual rights;
- entail new charges on the public purse;
- introduce or amend legislative provisions or require legislative measures for their implementation;
- concern diplomatic representation or consular functions, or co-operation on judicial or prison matters;
- entail the handing-over to international organisations - in the interests of the Andorran people or for the sake of progress or international peace - of legislative, executive or judicial powers.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to approval is a permissible means of expressing consent to be bound by treaties other than those covered by Articles 64(1) or 65 of the Constitution (see list above), that is for which the Council General's approval is not needed.

5. In what cases is signature subject to ratification required?

Under Section 13 of the Act regulating the Activity of the State in respect of Treaties, the negotiators must, in the case of treaties covered by Articles 64(1) or 65 of the Constitution (see list in reply to question 3), express their consent in a form that makes it subject to the Council General's approval.

The government may request the Council General to approve treaties other than those covered by Articles 64(1) or 65 of the Constitution.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The legal system of Andorra does not make this distinction.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The government must authorise the formal negotiation of all treaties.

During negotiations the Ministry of Foreign Affairs works in close co-operation with the ministerial department responsible for the subject matter of the treaty.

In the case of treaties that do not require parliamentary approval, the negotiators express their consent and the treaty is adopted according to the rules of the conference, organisation or body that drafted it.

Once a treaty has been adopted, the government instructs that it be published in the official gazette - the *Butlletí Official del Principat d'Andorra (BOPA).*

Treaties that require the Council General's approval go through the parliamentary process in the same way as bills. If Members of the Council or parliamentary groups table proposals to reject a treaty or to enter reservations or declarations in respect of it, these are treated as amendments.

The negotiators must express their consent to this type of treaty in a form that enables the Council General to give prior approval to its adoption.

The Council General can decide whether its approval must be given under Article 64(1) of the Constitution (requiring an absolute majority of the Chamber) or Article 65 (under which legislative and other functions may be relinquished to international organisations through a treaty passed by a majority of two-thirds of the Members).

The Syndic [Speaker of the Council General] then informs the Co-princes simultaneously of the decision, so that they can express the state's consent to be bound by the treaty and instruct that it be published in the official gazette (the *BOPA*) and that the instrument of accession be deposited.

The instrument of accession is deposited in the name of the Co-princes. If one of them is unable to sign it, it may be signed by the other with a countersignature by the Head of government.

8. When ratification is necessary, please specify :

    a) Which authority is competent to ratify?

In the case of treaties that have been submitted for parliamentary approval, the Co-princes must express the state's consent. The instrument incorporating that consent is signed by the two Co-princes. If one is unable to sign, the other may do so, with a countersignature by the Head of government.

    b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

In the case of treaties that have been submitted for parliamentary approval, the Co-princes must express the state's consent. The instrument incorporating that consent is signed by the two Co-princes. If one is unable to sign, the other may do so, with a countersignature by the Head of government.

    c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

It is only after a treaty has received parliamentary approval that the Co-princes are called on to express the Andorran state's consent to it.

    d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

In the case of treaties submitted for parliamentary approval, the Co-princes, in accordance with Section 14 of the Act, must express the state's consent not less than eight days, and not more than 15 days, after approval is given.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

    a) reservations should be made?

    b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The Act provides only for the case referred to in part c) of the question, stipulating that the government, after consultation with the Minister for Foreign Affairs, shall take decisions on internationally important acts of the state that affect treaties to which Andorra is a Party, and in particular any reservations, any declarations by other Parties acceding to the treaties after Andorra, or referring to the withdrawal of reservations, or any objections made by the other states (see Section 25 of the Act).

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes, international treaties are incorporated into the law as soon as they are published in the official gazette (see Section 23 of the Act).

12. If so, does the incorporation happen by reason of (and at the time of) the signatures not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Treaties that have been lawfully concluded and officially published are effective from the date of their entry into force. The Ministry of External Relations announces the date of each treaty's entry into force by publishing a notice in the official gazette (*BOPA*).

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Section 23 of the Act and Article 3(4) of the Constitution of Andorra provide that international treaties become part of the legal system, but do not explicitly define their legal status.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes. Andorra's signature of a treaty indicates a firm intention to ratify it, although if it is submitted to the Council General, the latter is entitled to refuse to approve it.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

In exceptional urgent cases, the government may undertake to apply all or part of a treaty provisionally before its entry into force, provided it does not concern statutorily reserved matters to which special conditions of adoption apply, or fall within the scope of Article 65 of the Constitution, and on condition that its application does not produce a situation that is in practice irreversible.

When a treaty being provisionally applied is covered by Article 64(1) of the Constitution, it is forwarded to the Council General immediately, and the circumstances of the provisional application are detailed, so that the approval procedure can begin.

If the treaty is not then approved by the Council General, the government immediately informs the other Parties applying it provisionally that Andorra does not intend to be a Party to it, and its application is thus terminated.

AUSTRIA

1. Which authority, in your country, is vested with the treaty-making power?

In principle, authority to conclude treaties is vested in the Federal President. But, in order to do so, he needs a proposal from the Federal government. The Federal President has, however, empowered the Federal government and individual Federal Ministers to conclude certain categories of treaties, which are not to be concluded through the exchange of instruments of ratification, viz:

- the Federal government to conclude intergovernmental agreements;
- to competent Ministers in conjunction with the Foreign Minister to conclude the interministerial agreements;
- to competent Ministers to conclude administrative agreements.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The organ of the State which has authority to conclude treaties (cf. Paragraph 1) also confers powers to conduct negotiations.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The Austrian legal system provides for both means of concluding treaties mentioned in this paragraph.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

In Austrian treaty-making practice signature not subject to ratification is normally used for those categories of treaties where the Federal President has authorised the Federal government or individual Federal Ministries to conclude treaties (“one phase-procedure”, cf. Paragraph 1). Signature subject to ratification is necessary for all treaties which require the approval of the National Assembly (cf. Paragraph 5).

The Austrian legal system only contains a concept of “conclusion of treaties” and does not have any special rules concerning accession or approval. The above matters with regard to “signature not subject to ratification” also therefore apply in Austrian law to accession and approval.

5. In what cases is signature subject to ratification required?

Treaties which require parliamentary approval (cf. Paragraph 7) way, before such approval is obtained, only be signed subject to ratification.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The Austrian Federal Constitution only contains the concept of “conclusion” which comprises all forms of concluding treaties (cf. Paragraph 4).

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Treaties are prepared by the competent administrative authorities, in doing so, they consult other authorities. Where treaties require implementation by Austria's federal States or affect the autonomous sphere of competence of these States in any other way, these States must be given the opportunity to present their views.

Treaties which require parliamentary approval, that is political treaties and treaties which amend or supplement Austrian laws, are submitted by the Federal government to the National Assembly for approval; after their approval they are ratified by the Federal President upon a proposal from the Federal government.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

Only the Federal President or an organ of the State authorised by him is competent to ratify.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Some treaties require parliamentary approval before ratification (cf. Paragraph 7).

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline for parliamentary approval in any of the cases mentioned in these sub-paragraphs.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The final decision on ratification lies with the Federal President. There is no deadline.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

According to Austrian law no procedures other than those described above are followed in cases of accessions to a treaty (cf. Paragraphs 4 and 7). Reference is made to the concept of "conclusion" as outlined in paragraph 6.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The organ of the State authorised to conclude the treaty also decides whether a reservation should be made or withdrawn or objections presented to reservations made by a third State.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

In principle, all treaties become incorporated into domestic law with their promulgation ("general transformation"). But, in certain cases the domestic applicability of a treaty may be made dependent on the enactment of domestic implementing provisions. In the case of treaties requiring parliamentary approval (cf. Paragraph 7) this is determined by a resolution of the National Assembly and in the case of other treaties by a declaration of the organ of the State authorised to conclude the treaty. Where parliamentary approval is required, the National Assembly may resolve that the treaty shall be implemented by enacting laws. For treaties not requiring parliamentary approval the organ of the State concluding the treaty may decide that the treaty shall be implemented by issuing orders.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

To become effective at the domestic level a treaty requires promulgation. Where it has been decided that it requires implementing provisions (cf. Paragraph 11) it becomes applicable at the domestic level as soon as they have been issued and promulgated.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Treaties are considered to be a special type of legal norm in Austria. Treaties requiring parliamentary approval (cf. Paragraph 7) either have the status of a constitutional law or the status of an ordinary law in the hierarchy of legal norm, and other treaties have the status of ordinances.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The final decision on ratification lies with the Federal President. But in administrative practice normally only treaties tend to be signed whose ratification is intended.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The Austrian Federal Constitution does not provide for the provisional application of treaties.

AZERBAIJAN

1. Which authority, in your country, is vested with the treaty-making power?

According to the Article 109 (17) of the Constitution of the Republic of Azerbaijan and to the Article 5 of the "Law of the Republic of Azerbaijan on concluding implementation and denunciation of the international treaties" treaty-making power is vested in President.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The President is competent to authorise to negotiate and sign international treaties on behalf of the Republic of Azerbaijan and on behalf of the government of the Republic of Azerbaijan. The President, also, provides a person with full power (Article 6 of the Law). Except the peace treaties, in any other less important matters the Prime Minister or the Ministry of Foreign Affairs exercise this authority.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

In accordance to the Article 13 of the Law in the cases when the treaty is not subject to ratification, the President approve or accept the treaties concluded on behalf of the Republic of Azerbaijan. The President under his decision Cabinet of Ministers or the Ministry of Foreign Affairs approve or accept treaties concluded on behalf of the government of the Republic of Azerbaijan. The President, Cabinet of the Ministers and the Ministry of Foreign Affairs on the concluding of the international treaties which are not subject to ratification.

5. In what cases is signature subject to ratification required?

Article 8 of the Law.

a. treaties on friendship, co-operation and mutual assistance, treaties determining of principals of interstate relations

b. peace treaties

c. treaties, between Azerbaijan Republic and other States on the territorial and borders matters, except the matters on division, alienation and amplification of the borders.

d. Treaties on military co-operation and defence matters.

e. Treaties on legal aid (assistance)

f. Treaties about the entering (participation) in regional and universal international organisation

g. Multilateral or long-term economic treaties.

h. Treaties determining the rules differ than the rules envisaged in laws of the Republic of Azerbaijan.

i. Treaties, which are subject to ratification in accordance with the laws of the international treaties of the Republic of Azerbaijan.

j. Treaties on loan issues.

k. Treaties on accession in interstate unions or other interstate communities;

l. Treaties on sending to other countries the military forces of the Republic of Azerbaijan or on accepting to the territory of the Republic of Azerbaijan the military forces of other States.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

In the cases when ratification is not required.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Ministry of Foreign Affairs presents proposals on ratification or approval of the international treaties to the President as a result of a series of consultations among the interested authorities. The decision to bind the State is taken by the President after the consideration of the proposals and then presented for ratification, approval or acceptance to the Parliament.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

Milli Mejlis (Parliament)

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

In case of accession to a treaty, there are no other particular procedures not described above.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The President.

11. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Yes.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

International treaties, which have incorporated into domestic law, have a higher value than ordinary laws.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, if it is envisaged by a treaty itself or upon mutual consent between the parties.

BELGIUM

1. Which authority, in your country, is vested with the treaty-making power?

Under the terms of the 1993 constitutional revision, treaty-making power in Belgium is vested not only in the federal state but also, within their sphere of competence, in the federal entities: the Communities and Regions.

Article 167 § 2 of the Constitution provides that treaties are concluded by the King, with the exception of those pertaining to the matters referred to in Article 167 § 3 (matters that come within the sphere of competence of the Regions or Communities). The King concludes treaties under the responsibility of the federal government.

Article 167 § 3 states that the governments of the Communities and Regions are responsible for concluding treaties pertaining to matters that come within the sphere of competence of their respective Councils.

In other words, the King is empowered to conclude treaties pertaining to matters that come under the sole responsibility of the federal government in the same way that the governments of the Regions and Communities (federal entities) are empowered to conclude treaties pertaining to matters for which they are solely responsible.

A co-operation agreement between the federal state, the Communities and the Regions lays down the conditions for concluding “mixed” treaties, in other words treaties not concerned exclusively with the particular sphere of competence of either the Communities, Regions or federal state. The agreement, which was adopted by a special law provided for in Article 167 § 4 of the Constitution, provides for joint participation by the federal entities and the relevant federal entities in the procedure for concluding “mixed” treaties.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Negotiations are authorised by the authority empowered to conclude the treaties.

Negotiations relating to treaties that are solely the responsibility of the federal state are conducted under the responsibility of the federal government. In practice, negotiations relating to agreements on matters within the sphere of competence of the federal state are authorised by either the Minister for Foreign Affairs or the Secretary General of the Ministry of Foreign Affairs.

In the case of negotiations relating to multilateral treaties under the responsibility of the federal state, full negotiating powers are granted by the Minister for Foreign Affairs. However, it is not customary to grant full negotiating powers in the case of bilateral agreements.

In the case of negotiations relating to a mixed treaty, full negotiating powers are granted by the Minister for Foreign Affairs subject to the formal approval of the Ministers responsible for external relations at the level of the Regions and/or Communities.

Negotiations relating to treaties coming under the exclusive responsibility of the Regions or Communities are authorised by the relevant regional or community bodies.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your state to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

b) If the answer is yes, please reply to questions 4 and following.

There are no constitutional or legal provisions in Belgium that draw a distinction between signature not subject to ratification and signature subject to ratification.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Article 167 § 2 of the Constitution provides that treaties concerned with areas under federal responsibility take effect only with the consent of the legislative chambers.

Under the terms of Article 167 § 3 of the Constitution, treaties pertaining to community or regional matters take effect only with the consent of the Councils of the Communities or Regions concerned.

Signature not subject to ratification, acceptance or approval is therefore not possible. However, this reservation may be merely implied, as is the case, for example, when a treaty provides that it will not take effect until each party has completed all the relevant procedures laid down in the Constitution.

5. In what cases is signature subject to ratification required?

Under the terms of Article 167 of the Belgian Constitution (see Question 4), a treaty does not take effect in domestic law until the parliamentary assemblies concerned by it have given their consent. Although the Constitution does not specify the timing for parliamentary approval, in practice consent is required before ratification can go ahead. Signature alone would not be enough to bind the federal state or federal entities to a treaty. In other words, signature of a treaty is always subject to ratification.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

In practice, consent to be bound by a treaty is traditionally expressed by either ratification or accession.

However, when other means of concluding treaties are provided, as, for example, when a treaty provides that it is possible to become party to it by depositing an instrument of acceptance (with or without prior signature), Belgium complies with the procedure provided for under the treaty.

Domestic consent procedures are not affected by these arrangements.

7. In each of the situations mentioned under 3.a, 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the state. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Information given to parliament

Article 168 of the Constitution provides that the Chambers shall be informed of negotiations relating to any revision of treaties establishing the European Communities or subsequent treaties and acts modifying or supplementing them as soon as such negotiations start. The contents of the draft treaty are bought to their attention prior to signature.

Suspension of the treaty-making procedure

Under Article 81 of the institutional reform law of 8 August 1980, as amended by the law on the international relations of the Communities and Regions of 5 May 1993, the governments of the federal entities must notify the King of their intention to start negotiations with a view to concluding a treaty.

On receipt of such notification, the federal Council of Ministers has 30 days in which to inform the relevant executive of any objections to the planned treaty. In the event of any objections the treaty-making procedure is temporarily suspended. Following notification of objections, the Interministerial Conference on Foreign Policy (composed of members of the federal government and the governments of the federal entities) has 30 days in which to take a decision according to the consensus procedure. In the absence of a consensus, the King may, by a decision adopted in the Council of Ministers, confirm suspension of the treaty-making procedure, but only in cases where the Contracting Party is not recognised by Belgium, where Belgium has no diplomatic relations with the Contracting Party, where relations between Belgium and the Contracting Party have been broken off, suspended or severely jeopardised, or where the proposed treaty is inconsistent with Belgium's international or supranational obligations.

Signature

Under the terms of Article 167 of the Constitution, treaties pertaining to matters falling within the sphere of competence of the federal state are concluded by the King. Insofar as treaties are not signed by the King, the signatory must be able to produce documents signed by the King and countersigned by the Minister for Foreign Affairs attesting that he or she has been granted full powers. Given the nature of their responsibilities, the Prime Minister and the Minister for Foreign Affairs may sign treaties without such prior authorisation.

Treaties that come under the sole responsibility of the Communities or Regions are signed by representatives appointed by their respective governments.

The co-operation agreement between the federal state, the Communities and the Regions provides for a special procedure for signing mixed treaties, where responsibility is shared.

When a mixed treaty is signed by both a federal government representative and regional and/or community representatives, the latter must be able to produce documents attesting that the respective entities have granted them full powers to sign the treaty. Similarly, the federal representative, other than the Prime Minister or Minister for Foreign Affairs, must be able to produce documents attesting that he or she has full powers granted by the King.

When a mixed treaty is signed by a single plenipotentiary who represents the federal state, before signature can take place the federal entities must despatch documents authorising the signatory to sign on their behalf.

Plenipotentiaries representing a Community or Region must be able to produce documents attesting not only that they have been granted full powers to sign by their own Community or Region but also that they have been authorised by the other entities concerned to sign on their behalf.

Consent

Treaties concluded by the King require the consent of the Chamber of Representatives and the Senate (federal level).

Treaties concluded by the governments of the Communities or Regions require the consent of their respective Councils.

Mixed treaties require the parliamentary consent of all the relevant legislative assemblies.

Draft legislation expressing consent to be bound by a treaty is submitted to the state Council for prior approval.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

Treaties that are the responsibility of the federal state and mixed treaties are ratified by the King. The ratification instrument is signed by the King and countersigned by the Minister for Foreign Affairs (ministerial responsibility). In the case of mixed treaties, the co-operation agreement between the federal state, the Communities and the Regions on the conclusion of treaties states that as soon as all the parliamentary assemblies concerned have given their consent, the Minister for Foreign Affairs shall have the instrument of Belgium's ratification or accession drawn up and submitted to the King for signature.

Bilateral treaties that come under the sole responsibility of the Communities or Regions are ratified by their respective governments.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Ratification is the responsibility of the executive. Although under the terms of the Belgian Constitution the executive does not require authorisation to ratify a treaty, the Constitution nevertheless provides that to take effect treaties require the consent of the relevant parliamentary assemblies.

To avoid any discrepancy between Belgium's international obligations and their domestic law effects, ratification does not take place until after the necessary parliamentary consent has been given.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

The Belgian Constitution sets no deadline for the start or finish of parliamentary consent procedures (which are necessary for a treaty to take effect in domestic law but which, strictly speaking, cannot be interpreted as authorisation).

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

It is up to the executive to decide whether or not to proceed with ratification, even if the treaty already has the parliamentary consent needed for it to take effect in domestic law. Obviously, like all its other powers, the executive exercises this power under the general political control of the legislative assemblies.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

The approval and ratification procedures are identical in the case of accession.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other states?

The authority authorised to ratify the treaty is also responsible for formulating and withdrawing reservations and for presenting objections to other countries' reservations.

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

In principle, a treaty is incorporated into domestic law upon its ratification, which takes place once the necessary parliamentary consent has been given. No further separate instrument is necessary.

However, a treaty is not enforceable against private individuals before the courts until it has been published in the Moniteur Belge.

It also goes without saying that a treaty cannot be effective in domestic law before its entry into force in relations between Contracting States.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

According to established Belgian case law, in the event of a conflict between a rule of domestic law and a rule laid down by a treaty which has direct effects in the domestic legal system, it is the rule laid down by the treaty which applies.

However, under the Law of 6 January 1989 on the Cour d'Arbitrage (administrative jurisdiction and procedure court) the Cour d'Arbitrage can be required to examine an application for judicial review of a law, decree or order that is believed to violate Articles 10 (equality of Belgians before the law), 11 (non-discrimination in respect of Belgian citizens' enjoyment of their fundamental rights and liberties, and rights and liberties guaranteed to ideological and philosophical minorities) or 24 (right to education) of the Constitution or the constitutional rules governing the respective responsibilities of the federal state, Communities and Regions. It is possible to file an application for judicial review of a legislative act expressing consent to be bound by a treaty. The application must be filed within 60 days of publication of the act.

With respect to a given case, a court may also ask the Cour d'Arbitrage for a preliminary ruling on whether or not a law, decree, or order violates the power-sharing rules governing relations between the federal state, Communities and Regions or the aforementioned Articles 10, 11 and 24 of the Constitution. In its decision 26/91 of 16 October 1991, the Court found that laws, decrees and orders expressing consent to be bound by a treaty were not excluded from the provisions defining its powers in respect of preliminary rulings.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

According to Belgian practice, signature of a treaty is in principle followed by ratification. However, there is no legal obligation for Belgium to ratify a treaty once it has been signed.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Under the terms of Article 167 of the Constitution, treaties are not effective in Belgium until they have the consent of the relevant legislative assemblies.

Provisional application of a treaty cannot therefore be effective in domestic law until the necessary parliamentary consent has been given.

Consequently, provisional application of a treaty is only allowed on an exceptional basis when the treaty contains no provisions which are binding on citizens or place a burden on the state budget.

BULGARIA

1. Which authority, in your country, is vested with the treaty-making power?

The following answer is given on the assumption that the question relates to authorities, competent to conclude treaties.

According to the Bulgarian legal system:

- the President of the Republic, by virtue of Article 92 (1) of the Bulgarian Constitution represents the State in its international relations and concludes treaties;
- the Council of Ministers, by virtue of Article 105 (1) of the Bulgarian Constitution carries out the foreign policy of the State in accordance with the Constitution and laws. The Council of Ministers concludes, approves and denounces treaties;
- the competent Ministers or Heads of governmental institutions, conclude agreements in the sphere of their competence, based on the decision of the Council of Ministers.

2. Which authority is competent to authorize negotiations and according to which procedure is the authorization given?

The authority competent to authorize negotiations is the Council of Ministers. Authorization is given according to the following procedure:

The competent Minister or Head of governmental institution prepares the draft treaties in conformity with the Constitution, legislation and international obligations of the Republic of Bulgaria. The draft treaty must be co-ordinated with all ministers and heads of governmental institutions interested in its subject. After that, a decision of the Council of Ministers:

- endorses the draft treaty as the basis for negotiations and
- authorizes a person to conduct negotiations and to sign the treaty.

The procedure is the same in cases where the draft treaties are prepared by other states or international organizations.

The Minister for foreign affairs grants full powers to the persons authorized to conduct negotiations and to sign the treaties are issued by.

The President of the Republic, the Prime Minister and the Minister for foreign affairs conclude treaties without having to produce full powers. The Republic of Bulgaria, being a party to the Vienna Convention on the Law of Treaties, has adopted this solution, contained in Article 7 (2) a of the Constitution.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance and approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

According to the Bulgarian legal system the consent of the Republic of Bulgaria to be bound by treaties may be expressed by ratification or by approval, acceptance, accession, signature not subject to ratification or approval and by an exchange of instruments constituting a treaty.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The Bulgarian legal system regulates signature not subject to ratification and signature not subject to approval. The cases in which the consent of Bulgaria to be bound by a treaty may be expressed by signature are defined in Article 12 of the Vienna Convention on the Law of Treaties. The Republic of Bulgaria has ratified the Vienna Convention on the Law of Treaties, which is a part of the domestic law of the country and takes precedence over any domestic legislation which contradicts it.

In the Bulgarian treaty-making practice signature not subject to ratification or approval is usually used for agreements concluded at ministerial level. In these cases such agreements come into force on the date of their signature.

5. In what cases is signature subject to ratification required?

According to the provision of Article 85 (1) of the Bulgarian Constitution:

The National Assembly shall ratify or denounce by a law all international instruments which:

- are of a political or military nature;
- concern the Republic of Bulgaria`s participation in international organizations;
- envisage corrections to the borders of the Republic of Bulgaria;
- contain obligations for the treasury;
- envisage the state`s participation in international arbitration or legal proceedings;
- concern fundamental human rights;
- affect the action of the law or require new legislation in order to be enforced;
- expressly require ratification;

6. In what cases and under what conditions acceptance or approval are possible? Are they preceded by signature?

Acceptance is possible in cases where the treaty provides a possibility for acceptance. In these cases the consent of the Republic of Bulgaria to be bound by such a treaty is expressed by ratification or approval.

The Council of Ministers approves treaties which are not subject to ratification according to the Article 85 (1) of the Bulgarian Constitution.

7. In each of the situation mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking decision consult other authorities (if so, which ones?) or professional or other interested groups?

The procedure that leads to the decision of the Republic of Bulgaria to be bound by a treaty in the above-mentioned situations consists of the following formal acts:

The competent Minister or Head of governmental institution prepares the draft treaties in conformity with the Constitution, legislation and international obligations of the Republic of Bulgaria. The draft treaty must be co-ordinated with all ministers and heads of governmental institutions, interested in its subject. After that, a decision of the Council of Ministers:

- endorses the draft treaty as the basis for negotiations and
- authorizes a person to conduct negotiations and to sign the treaty.

After signature of the treaty, with the exception of treaties coming into force on the date of their signature, the treaty is co-ordinated with ministers and heads of governmental institutions interested in its subject. After that, the Council of Ministers approves the treaty or proposes to the National Assembly to ratify it with a law if the treaty is a subject to ratification according to the Constitution.

8. When ratification is necessary, please specify:

   a) Which authority is competent to ratify ?

   b) Must it have prior authorization to ratify ? If so, who gives such authorization and what form does it take ?

   c) In cases when a prior authorization is required, must it be applied for within a certain deadline? Must the decision of the authorizing authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence ?

   d) Once authorization to ratify is granted, must the authorized authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

By virtue of Article 85 (1) of the Bulgarian Constitution the National Assembly is competent to ratify treaties which are subject to ratification. There is no deadline for the ratification of the treaties.

9. In cases of accession to a treaty, are there any other procedures not described above which are followed ?

According to the Bulgarian legal system no procedures other than those described above are followed in cases of accession to a treaty.

10. Which authority decides whether:

   a) reservations should be made ?

   b) reservations should be withdrawn ?

   c) objections should be presented to reservations made by other States ?

The State organ, which expresses the consent of the Republic of Bulgaria to be bound by a treaty, is competent to decide whether a reservation should be made or withdrawn or objections should be presented to reservations made by other States.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law ?

All treaties become incorporated into the domestic law of the country.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary ?

The incorporation of treaties into the domestic law of the country happens by reason of signature not subject to ratification, ratification, acceptance, approval or accession. According to the Bulgarian legal system the treaty must be promulgated.

13. What is the legal status of a treaty incorporated into the domestic law of your country ?

By virtue of Article 5(4) of the Bulgarian Constitution, treaties, which are ratified by constitutionally established procedure, promulgated and have come into force with respect to Bulgaria, are considered as part of the domestic law of the country. These treaties take precedence over any domestic legislation which contradicts them.

14. Does signature of a treaty by your country indicate a firm intention to ratify it ?

In principle, the signature of a treaty by Bulgaria indicates a firm intention to ratify it if the treaty is subject to ratification according to Article 85 (1) of the Bulgarian Constitution.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions ?

A treaty or part of a treaty may be applied provisionally before its entry into force if:

- the treaty itself so provides or
- the negotiating states have in some other manner so agreed.

CROATIA

1. Which authority, in your country, is vested with the treaty-making power?

Under Article 5 of the Croatian Law on Conclusion and Implementation of Treaties (1996) the President of the Republic is vested with the general treaty-making power. He may authorise the government to conclude a particular treaty. In addition, the government is entitled, under Article 5.2 of the aforementioned Law, to conclude treaties which fall in the domain of economy, public services and environment without the need to seek a special authorisation by the President.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The decision to engage in the treaty-making procedure is taken by the President or by the government (subject to the prior authorisation by the President, if required).

It is usually the Ministry concerned with a particular matter or a domain that initiates the procedure of treaty-making. That Ministry should prepare a draft of the treaty and reasons for its conclusion and submit it to the relevant government bodies for consultation (namely the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice and the government's Office for Legislation). Having completed this preliminary procedure, the competent Ministry presents its treaty-making initiative to the government, which should (after obtaining authorisation from the President, if necessary) formally adopt a Decision on the commencement of the procedure for the conclusion of the treaty in question, thus authorising the beginning of negotiations. In the negotiations the Republic of Croatia is represented by the delegation designated by the President or the government.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Article 1.4 (13) of the Law on Conclusion and Implementation of Treaties makes no such distinction while defining ratification, acceptance, approval, signature and accession as acts whereby the Republic of Croatia, at international level, gives its consent to be bound by a treaty". Nevertheless, under certain circumstances, determined in the Constitution, signature without ratification is in practice ruled out as a means for expressing the consent of Croatia to be bound by treaty (see replies under 4.)

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Under Article 133 of the Croatian Constitution, a formal confirmation before the Croatian Parliament ("Sabor") is required for those treaties which require the passing or amendment of laws or which imply financial obligations as well as those of political or military character. This formal confirmation by the Sabor constitutes the basis for the consent of the Republic of Croatia to be bound by a treaty, whereupon this consent is also expressed at international level, usually in the form of ratification. This implies that, in case of treaties covered by Article 133 of the Constitution, the final consent (such as signature without ratification etc.) cannot be given before the parliamentary procedure has been completed. *A contrario*, all treaties not falling within these categories are, in principle, eligible for signature not subject to ratification, acceptance or approval.

5. In what cases is signature subject to ratification required?

As stated above, ratification, as a form of giving consent to be bound by a treaty after it has been confirmed by the Sabor, is necessary for those treaties which require passing or amendment of laws or which imply financial obligations as well as those of political or military character.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Whereas the act of ratification (which is the prerogative of the President) in Croatian legal practice is reserved for treaties subject to parliamentary procedure, acceptance and approval are typical for the procedure conducted by the government (in cases when ratification is not required). Whether a treaty will be accepted or approved depends primarily on the specific features of the treaty itself. Likewise, this may be preceded by signature if it is envisaged by treaty provisions.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

First assessment of the impact a treaty might produce for the Republic of Croatia should be given already at the preliminary stage, even before a decision has been taken to engage in negotiations or become a signatory or a party to a treaty. This assessment must include an evaluation as to whether a treaty requires ratification or not. Based on such evaluation, the Ministry in charge for the treaty should, when initiating the treaty-making process before the government, propose modalities for the expression of Croatia's consent to be bound by it.

To these ends consultations are conducted between state organs throughout the treaty-making process. It is indispensable to seek opinions from the Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice and the governments Office for Legislation, while consultation with other bodies, governmental or non-governmental as well as interested groups, is optional. Ministry of Foreign Affairs practically acts as a co-ordinator.

When the treaty-making process allows it, the negotiators are obliged, after the adoption of the text of a treaty, to present this text together with a report on negotiations to the President/government. The latter may decline to proceed with the signature if the adopted text is in contradiction with the mandate given to the negotiators.

Following the signature, if an additional form of expression to be bound is required, the Ministry in charge initiates the subsequent procedure before the government or, through the government, before the Sabor, leading to the approval or acceptance or ratification and publication of the treaty. The same government bodies are included in this stage as in the earlier phases of the treaty-making process.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

Ratification, as an external act by which consent is given on behalf of the Republic of Croatia to be bound by a treaty, is the prerogative of the President of the Republic. The President may authorise the Prime Minister or Minister for Foreign Affairs to sign an instrument of ratification.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

As explained above, treaties of a certain nature have to undergo parliamentary procedure which results in a formal confirmation enacted in the form of a Law. This legislative act (Law on Confirmation of a Treaty) constitutes the basis for the act of ratification.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No specific deadline is envisaged in the relevant Croatian legislation either for the completion of parliamentary procedure (whereby prior authorisation for ratification is given), or for the ratification act itself.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

According to Article 19 of the Croatian Law on Concluding and Executing Treaties, its provisions concerning the confirmation of a treaty by the Sabor shall apply, *mutatis mutandis*, to the accession of the Republic of Croatia to multilateral treaties.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

As the executive is endowed with the exclusive capacity of concluding treaties, which includes the power to formulate reservations, the authority to make or withdraw a reservation is in principle with the President of the Republic or the government (if it has been authorised by the President to engage in a particular treaty-making process). A proposal to make or withdraw a reservation may be put forward by any governmental (or other) body and it has to undergo the same procedure as any treaty-making initiative (see replies to questions 2 and 7).

However, in case of those categories of treaties which are subject to parliamentary confirmation, which constitutes the basis for a definite expression of consent at international level, the reservation has to be incorporated in the Law on Confirmation of a treaty.

c) objections should be presented to reservations made by other States?

The decision whether to make objections to reservations made by other States is principally vested in the Ministry of Foreign Affairs (unless the question of objection is presented to the government as a political issue). The competent Ministries are consulted as to the content of the objection.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties published in the Official Gazette which have entered into force with respect to the Republic of Croatia form part of the Croatian legal system. Of course, some treaties, by their nature, might require the passing of additional implementing legislation.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

As described above, a separate act of legislative nature is necessary.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Pursuant to Article 134 of the Constitution "treaties concluded and confirmed in accordance with the Constitution which have been published and have entered into force with respect to the Republic of Croatia, form a part of the internal legal order of the Republic". They are superior to internal laws of Croatia in terms of their legal force.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The signature (subject to ratification) generally indicates a firm intention to ratify a treaty, although this cannot be regarded as creating a legal obligation to this end.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Under Article 10 of the Law on Concluding and Executing Treaties, a consent for the provisional application of a treaty or any part of a treaty, before its entry into force, can be given on behalf of the Republic of Croatia only subsequent to the approval by the President of the Republic or by the government.

CYPRUS

1. Which authority, in your country, is vested with treaty-making power?

The following answer is given on the assumption that the question relates to all phases of the treaty-making power, including ratification.

Under the Constitution the treaty-making power is divided between:

a. The Council of Ministers which decides which treaties are negotiated and/or signed (Article 54 and 169 of the Constitution);

b. The House of Representatives. Under Article 169(2) treaties other than those relating to commercial matters, economic co-operation and modus vivendi shall not be operative and binding on the Republic unless they are approved by a Law of the House of Representatives;

c. The President of the Republic signs the letter relating to the transmission of the instruments of ratification (Article 37 (c) (ii). In addition, under Article 48(d) and (f) of the Constitution the President has the right of final veto on Decisions of the Council of Ministers and Laws and Decision of the House of Representatives concerning "foreign affairs" a term which includes the conclusion of treaties and international agreements (see definition of the term "foreign affairs" in Article 50 (1) (a) (i) and (ii) of the Constitution).

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The competent authority to authorise negotiations is the Council of Ministers. Authorisation is given according to the following procedure:

a. The Council of Ministers takes a decision, for entering into negotiations with a view to concluding a treaty.

b. The Council of Ministers designates a person or persons to represent the Republic for negotiating the treaty and, to this end, it provides them with the pertinent instructions.

c. The representative(s) designated for the negotiation of a treaty receive their full powers signed in accordance with art. 37 (c) (1) of the Constitution by the President of the Republic, as Head of the State.

3. Does the legal system of your country draw a distinction between signature not subject to ratification and signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the concept of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The legal system of Cyprus does not expressly draw a distinction between signature not subject to ratification and signature subject to ratification, acceptance or approval though Article 169 of the Constitution makes it impossible for certain treaties to be signed without making them subject to ratification.

The Republic of Cyprus, moreover, is a party to the Vienna Convention on the Law of Treaties (approved by Law 62 of 1976) and, therefore, the provisions of that Treaty regarding the distinction (particularly the provisions of Articles 11 - 16) are incorporated in the legal system of Cyprus.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval; possible?

Signature not subject to ratification is possible only in the case of treaties, which fall under para. 1 of Article 169 of the Constitution, that is treaties relating to commercial matters, economic co-operation and modus vivendi which may be concluded under the decision of the Council of Ministers.

It should be noted that there is a tendency to interpret the term "commercial treaties" in a wide sense and not in the narrow sense of an exchange of goods.

5. In what cases is signature subject to ratification required?

Any treaty other than those specified in paragraph 1 of Article 169 of the Constitution (see answer in Question No. 4) must be signed subject to ratification because such treaties, as expressly provided in paragraph 2 of the same Article, need Parliamentary approval before they can become operative and binding on the Republic. Therefore, such a treaty must be signed subject to ratification, which will be given only when the treaty has been approved by a Law of the House of Representatives.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval as an international act expressing on the international plane the consent of the State to be bound by a treaty is unknown to the Constitution of Cyprus. However, when acceptance or approval is required under Article 14 of the Vienna Convention it is treated in the same way as ratification.

7. In each of the situations mentioned under 3(a), 4, 5 and 6, please - describe the steps, which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The procedure that leads to the decision to bind the State consists of the following formal acts:

a. Decision of the Council of Ministers for entering into negotiation (cf. paragraph 2).

b. Decision of the Council of Ministers for signing a treaty

    i. not subject to ratification, or

    ii. subject to ratification.

c. Decision of the Council of Ministers for the conclusion of a treaty falling under art. 169 of the Constitution already signed subject ratification or law made by the House of Representatives for the approval of a treaty falling under art. 169 para. 2 of the Constitution already signed subject to ratification.

d. Ratification (cf. paragraph 8).

Before reaching the decision (a) above, the practice is that the Ministry or Ministries responsible for a certain matter, the regulation of which, by a treaty, is prima facie feasible and desirable, undertake a preliminary study as to whether a treaty should be concluded.

During this stage the competent Ministries may, depending on the nature and the subject of the treaty, consult other authorities, or interested individuals or groups of individuals (private sector).

The Attorney General of the Republic who is, according to the Constitution, the legal adviser of the government may be requested at any stage of the procedure to give legal advice.

If the conclusions of the preliminary study are in favour of the conclusion of the treaty in question, then a Minister, usually the Minister for Foreign Affairs, submits to the Council of Ministers a document containing the views of the Ministries concerned, and a suggestion/proposal to the Council of Ministers to take a decision for entering into negotiation (cf. paragraph 2) and sometimes to sign the treaty.

If the treaty has already been negotiated and signed under a decision of the Council of Ministers subject to ratification and is one of those falling under art. 169 para. 1 of the Constitution, the Council of Ministers, on the advice of the competent Minister, takes a final decision under which the treaty is concluded. If the treaty has already been negotiated and signed under a decision of the Council of Ministers and is one of those falling under art. 169 paragraph 2 of the Constitution, the competent Minister introduces a bill to the House of Representatives into which the treaty is incorporated for the approval of the treaty. The bill is "accompanied by an explanatory report stating the objections and reasons" of the Bill.

Following a decision of the House of Representatives to this effect, the aforementioned Bill, into which the treaty is incorporated, is referred for debate before one or more Committees of the House. The committee of the House proceeds to an early consideration of the Bill and prepares its report, which is distributed to all Representatives and then is put before the House for consideration after which the enactment of the law, by which the treaty is approved, takes place.

Ministers can be present at the debates of the Committee of the House and express their views regarding the bill and the treaty. The Committees of the House have the right to summon any interested party, authority, organisation, society, association, trade union, person or corporate body to give information and evidence to express and explain an opinion or view on the Bill.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

Article 37 of the Constitution provides that the President signs the letter transmitting the instruments of ratification but the organ of the Republic, which is competent to ratify a treaty, is the Council of Ministers under Article 54 of the Constitution.

In practice the text of the letter of transmission and the text of the instrument of ratification are, as a rule, embodied in a single document, which is signed by the President of the Republic, and this document serves as a formal instrument of ratification. This practice may be based on the assumption that the ratification by the Council of Ministers is implied in the original decision of the Council of Ministers for negotiation and/or signature of a treaty (unless it is expressly provided in the said decision that the treaty should be made subject to ratification) and, therefore, in the case of treaties which require authorisation suggested by Law, the President "transmits" the ratification when such a Law has been made and in the case of treaties which need not be approved by any Law but have, nevertheless, been made subject to ratification under Article 14 of the Vienna Convention it is suggested that the Minister for Foreign Affairs may "transmit" the instruments of ratification.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

As mentioned above prior authorisation is necessary only in the case of treaties, which fall under para. 2 of Article 169 of the Constitution and in such a case the authorisation takes the form of a Law of the House of Representatives.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No time limit is provided.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it retrain from ratifying indefinitely?

The President under Article 48 paragraphs. (d) and (f) of the Constitution has the right of veto on all Laws of the House of Representatives and Decisions of the Council of Ministers concerning "foreign affairs", a term which includes the conclusion of the treaties.

9. In cases of accession to a treaty, are there any other procedures not described above which are followed?

In cases of accession to a treaty the procedures are similar to those applicable for the conclusion of a treaty.

10. Which authority decides whether:

a) reservations should be made?

The authority, which decides whether reservations should be made, is, as a rule, the Council of Ministers that may act on the advice of the Attorney-General or on the recommendation of the appropriate Ministry. If the treaty falls within the provisions of Article 169(2), the House of Representatives may decide whether additional reservations should be made to those decided by the Council of Ministers, but it is submitted that, in view of the provisions of Article 54 of the Constitution, the House of Representatives cannot override a decision of the Council of Ministers that reservations should be made.

b) reservations should be withdrawn?

It is suggested that the authority which decides whether objections should be presented to reservations made by other States should be the Foreign Ministry after a decision of the Council of Ministers and/or on the advice of the Attorney-General

c) objections should be presented to reservations made by other States?

The answer is the same as in case 10 (a).

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

Yes, treaties to which Cyprus is a party are incorporated in the municipal law of Cyprus.

12. If so, does the incorporation happen by reason of (and at the same time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

It is suggested that the incorporation of a treaty in the domestic law of Cyprus by virtue of Article 169 of the Constitution occurs at the time of the publication of the treaty (para. (1) of Article 169) or of the Law of the House of Representatives by which the treaty is approved (para. (2) of Article 169).

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Any treaty concluded in accordance with the Constitution has, as from its publication in the official Gazette of the Republic, superior force to any municipal law on condition that such a treaty is applied by the other party thereto.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature of a treaty does indicate firm intention to ratify it, though in the case of treaties falling within para. (2) of Article 169 it can only indicate a firm intention on the part of the Executive co introduce a bill to the House of Representatives for the approval of the treaty.

15. Is the provisional application of a treaty before its entry into force possible in your system and under what conditions?

It is doubtful if a treaty can ever be provisionally applied before its entry into force. Certainly it cannot be applied provisionally when the treaty effects some change in the domestic law of Cyprus or affects private rights.

CZECH REPUBLIC

1. Which authority, in your country, is vested with the treaty-making power?

In conformity with Article 63 of the Constitution of the Czech Republic (Law No. 1/1993) amended by Law 347/1997, international treaties are negotiated and ratified by the President of the Republic, negotiation of international treaties may be delegated to the Government or, with its consent, to its individual members. On the basis of this authority, the President of the Republic, by virtue of his decision on the negotiation of international treaties of 28 April 1993, No 144/1993, delegated the power to negotiate and ratify treaties not requiring the consent of the Parliament to the Government of the Czech Republic, and the power to negotiate and ratify treaties which, in addition, by their significance do not exceed the competencies of Government authorities, to a member of the Government in charge of the appropriate ministry or Government authority.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The negotiation, internal debate, implementation and denouncing of international treaties is subject to procedures laid down by the Government Guidelines approved by Government Resolution No. 328 of 16 June 1993. The Guidelines are binding on all authorities involved in the preparation and negotiation of international treaties.

The above-mentioned Guidelines provide that the preparation and discussion of the proposal to negotiate a treaty is the responsibility of the Ministry or a Government authority headed by the member of Government within whose competence the issues covered by the treaty fall partly or predominantly. This authority elaborates and discusses with the heads of the authorities concerned (the participation of the Ministry of Foreign Affairs is obligatory) draft guidelines for the negotiation on the treaty, including draft principles of the treaty. As soon as all authorities concerned approve the guidelines, the body responsible for the negotiations may launch the process of negotiations with the other party / parties. Once the negotiations are completed, the same authority submits the draft to heads of Government authorities and invites their comments prior to signature. After this debate, the draft is submitted to the authority empowered to approve the treaty (see ad 1). This authority, inter alia, decides whether the treaty should be once again submitted for its approval after the signature. Treaties requiring parliamentary approval are always submitted after signature to the Parliament of the Czech Republic. Only then they may be ratified by the President of the Republic.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The Czech legal system and contractual practice recognise signature not subject to ratification and signature subject to ratification, acceptance or approval.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification and acceptance is possible in Czech contractual practice, signature of a treaty not subject to approval is naturally possible as well - but this last option is used only exceptionally.

Signature not subject to ratification or acceptance is however rather exceptional and as a rule is used only in the case of treaties negotiated by individual members of the Government. A majority of other treaties are subject to ratification or approval after signature.

5. In what cases is signature subject to ratification required?

The consent of the Czech Republic to be bound by a treaty is expressed in the form of ratification if stipulated by the treaty. In practice the signature of a treaty subject to ratification is used for treaties concluded by the President of the Republic, i. e. in cases where the President -- has not delegated the relevant powers to other authorities, or in cases where he delegated these powers but reserved the right to conclude a specific treaty. The President has not delegated the power to conclude treaties subject to parliamentary approval, that is treaties on human rights and fundamental freedoms, political treaties (e.g. treaties on settlement of disputes between states, treaties on disarmament), general economic treaties (e.g. treaties on trade and navigation, treaties on customs and monetary unions) and treaties the implementation of which must be regulated by a special law.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The consent of the Czech Republic to be bound by a treaty is expressed by acceptance or approval if stipulated by the treaty. Acceptance as one of the forms of expressing the consent of a state to be bound by an international treaty is used in Czech practice for treaties in respect of which the President of the Republic has delegated the relevant powers to the Government or, with its approval, to its individual members. The approval of a treaty is preceded by its signature. The internal. procedure preceding the signature of a treaty and its approval is governed by the above-mentioned Government Guidelines (see ad 2 and 7).

Approval as a form of expressing the consent of a State to be bound by a treaty is used in Czech practice only if required by a multilateral international treaty. Those cases are rare.

7. In each of the situations mentioned under 3 a), a, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

As has been mentioned above, the procedure of negotiation, internal debate, implementation and denouncing of international treaties is governed by the Government Guidelines No. 328 of 16 June 1993. Preparation and negotiation of a treaty are the responsibility of the Government authority within whose competence the issues regulated by the treaty fall party or predominantly.

Before opening the negotiation on the text of the treaty with the other contracting party, the above mentioned authority elaborates guidelines for the negotiation on the treaty including a proposal of principles of the treaty and discusses it with all authorities whose range of activities could be affected by the future treaty, and always also with the Ministry of Foreign Affairs (the so-called participating bodies). As soon as the guidelines are approved, the negotiations may start. The text of the treaty resulting from the negotiations, is again submitted by the above-mentioned authority to the participating bodies who express their positions, The documentation containing the draft treaty is then presented together with the positions of the participating bodies to the authority competent to approve the negotiation of the treaty and to issue full powers for the signature. The regulations for negotiating treaties do not require consultation with professional or other interested groups.

Regulations for negotiating treaties cover the procedures following the signature. The procedure is necessary for the Czech Republic to demonstrate its will to be bound by the given treaty. After signature, most treaties are subject to approval or ratification. These procedures fall within the competence of the authority which was competent to sign the treaty.

Treaties which are subject to parliamentary approval prior to ratification are submitted to the Parliament for approval. After this approval they are ratified by the President of the Republic.

In case of treaties signed subject to approval, this approval is generally ensured at the domestic level within the framework of the Government debate on the proposal to sign the treaty. The Government is generally competent to negotiate such agreements.

The procedures for negotiating a treaty before its adoption are the same as the above-mentioned procedures, depending on whether the power to negotiate the treaty has been delegated by the President or not.

The consent of the State to be bound by the treaty is expressed through procedures common in international contractual practice, as required by the specific treaty (notification, deposition of instrument of acceptance, exchange of instruments of ratification, deposition of instruments of ratification, deposition of instruments of acceptance).

8. When ratification is necessary, please specify:

   a) Which authority is competent to ratify?

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

   c) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it retrain from ratifying indefinitely?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Only the President of the Republic is authorised by the Constitution of the Czech Republic to ratify international treaties. Some treaties require parliamentary approval prior to ratification. Czech legislation does not set any deadline for ratification.

9. In cases of accession to a treaty, are there any other procedures not described above which are followed?

The consent of the Czech Republic to be bound by a treaty is expressed in the form of accession if required by the multilateral treaty in question. These are mostly cases when the Czech Republic did not participate in the process of negotiating the treaty. In this case, the domestic discussion of the treaty is the same as for other forms of expressing the consent to be bound by a treaty, depending on whether the power to negotiate the treaty has been delegated to the Government or to one of its members.

10. Which authority decides whether:

   a) reservations should be made?

   b) reservations should be withdrawn?

   c) Objections should be presented to reservations made by other States?

The authority competent to negotiate and approve a specific international treaty (that is the President, the Government or its individual member to whom the President has delegated the power to negotiate and approve the treaty) is at the same time competent to decide, following the appropriate domestic debate, on the formulation of reservations to the treaty and about their withdrawal. The procedure in the case of objections against the reservations

made by other States is not governed by the relevant regulations. Most probably, such decisions would be within the competence of the Ministry of Foreign Affairs in consultation with the respective Government authority responsible for the implementation of this treaty or the provision to which the reservation relates.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subjects to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

All treaties binding on the Czech Republic must be published. Ratified and promulgated treaties on human rights and fundamental freedoms are directly applicable and take precedence over statutes. Other treaties regulating rights and duties already laid down by law require the consent of the Parliament. These treaties will be applied on the basis of a reference in the appropriate laws according to which the provisions of an international treaty can differ from the relevant legislation. In some cases, adoption of a new law or an amendment to the existing law may be necessary with a view to the obligations arising from the treaty. In these cases, the ratification of the treaty cannot precede the adoption or amendment of such law.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The Czech legislation is, for the time being, based on the dualistic concept of international and domestic law. In principle, international treaties are not incorporated into domestic law, even if they are ratified and promulgated in the Official Journal *(Sbirka zàkonù).* The content of international treaties must be incorporated into specific domestic legislation and becomes binding in any of the forms in Czech legislation. There are nevertheless two significant exceptions to the dualistic conception. *the Constitution of the Czech Republic* incorporates into the domestic law *international treaties on human rights and fundamental freedoms,* making them "immediately binding" and "precedent over statutes". A systematic interpretation of the Constitution leads to a conclusion that these treaties have the legal force of a constitutional law. The second exception includes those international treaties which are referred to in any the valid *ordinary* laws in the form of a legal *reference.* The appropriate legislation enables the application of the given law only if not stipulated otherwise by an international treaty. The legal reference thus ensures for international treaties precedence over the appropriate law. A far-reaching Government bill amending the Constitution introduced in the Parliament in April 1999, inter alia, incorporates into the domestic law all international treaties approved by the Parliament. The bill was nevertheless killed in the Chamber of Deputies of the Parliament of the Czech Republic.

14. Does signature of a treaty by a country indicate a firm intention to ratify it?

Signature of a treaty subject to ratification indicates the intention to ratify the treaty.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application of a treaty is possible if the President has delegated the power to the negotiate the treaty to the Government, or with the approval of the Government, to its individual member. Treaties negotiated without delegation of powers, that is treaties negotiated in the name of the President, can be provisionally applied in very exceptional cases, provided that they are economic treaties of general character. In any case, provisional application of a treaty must be approved, after the appropriate domestic debate, by the authority competent to approve the treaty in who's the name the treaty is negotiated.

DENMARK

1. Which authority, in your country, is vested with treaty-making power?

According to section 19 of the Danish Constitution (see the Appendix) the treaty-making power lies with the "King", that is the government. Normally, the Minister for Foreign Affairs will be responsible for the treaty-making process. When special professional relations indicate that another Minister should be responsible for a treaty within his particular field, the Minister for Foreign Affairs may leave his competence to the Minister in question. The consent of the Folketing (Parliament) is required in certain cases (cf. section 19 of the Constitution and item 8 (b) below).

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The "King", that is the government, is competent to authorise any person to negotiate and sign treaties and to provide such a person with full powers. Royal full powers signed by the Queen and countersigned by the Minister for Foreign Affairs are used for treaties among heads of states and other important treaties. In other cases, full powers are signed by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to question 4 and following.

Section 19 of the Constitution requires parliamentary approval of certain treaties. Normally such treaties therefore will be signed subject to ratification.

Treaties among heads of states are also as a rule subject to ratification.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification, acceptance or approval is possible in the following cases:

- when parliamentary approval is unnecessary,
- when parliamentary approval has been given to special categories of treaties, e.g. certain postal agreements,
- when, exceptionally, parliamentary approval has been obtained prior to the signature of the treaty.

5. In what cases is signature subject to ratification required?

Signature subject to ratification is required with regard to treaties requiring parliamentary approval (including treaties requiring new parliamentary legislation) and treaties signed on the basis of a royal full power.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is used in Danish constitutional practice in the same way as ratification, depending on the requirements of the treaty in question. They are not necessarily preceded by signature.

7. In each of the situations mentioned under 3 (a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The formal decision to bind the State by signature is taken in a Cabinet meeting or by the resolution of the responsible minister, typically the Minister for Foreign Affairs.

The formal decision to bind the State by ratification is taken by royal resolution on the proposal of the Cabinet.

In a number of cases the prior consent by the Parliament is required.

Treaties which will be applicable to the Faroe Islands and to Greenland must, by virtue of the Home Rule acts for these territories, be submitted to the Home Rule authorities before final decision to be bound is taken.

Depending on the treaty, consultations with professional groups may be carried out.

For administrative agreement, the relevant Cabinet Minister or head of an administrative body may take the decision to bind the State.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

For treaties among heads of states: the “King”, whose signature shall be accompanied by the signature of a minister. For other treaties the Foreign Minister or, exceptionally, other ministers.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The consent of the Folketing is required in certain cases, cf. Section 19 of the Constitution.

The question whether or not a treaty obligation is of “major importance” according to Section 19 is a matter of discretion. In cases of doubt, the consent will normally be procured.

The form of the consent will usually be a parliamentary resolution, but consent may also be given by statute or lie implicitly in legislation already adopted.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No deadlines are stipulated.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no such deadline, but ratification will normally be undertaken immediately after the consent of the Folketing has been given. The Constitution leaves open the question whether or not a treaty can remain non-ratified after the consent of the Folketing has been given.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No. In the accession situation, the “ratification” procedure will normally be applied in the same way, but without the preceding signature.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The authorities involved in the treaty-making (cf. item 7).

11. Do treaties to which your country is a party become incorporated into your country’s domestic law?

The Danish Constitution is “dualistic” in the sense that treaties are not automatically considered a part of domestic law.

Consequently, statutes or administrative orders will be necessary to give effect in domestic law to treaty provisions.

However, Danish courts are more and more recognising international treaties as a subsidiary source of law applicable in Danish courts.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See answer to question 11.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

A treaty incorporated in Danish domestic law has the same legal status and constitutional level as the rule that incorporates the treaty.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

It indicates an intention to ratify.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, but the internal legal situation which the treaty requires has to exist or to be provided in order that the treaty obligations can be fulfilled from the moment of their provisional application.

APPENDIX

The Constitution of the Kingdom of Denmark Act

Section 19.

(1) The King shall act on behalf of the Realm in international affairs. Provided that without the consent of the Folketing the King shall not undertake any act whereby the territory of the Realm will be increased or decreased, nor shall he enter into any obligation which for fulfilment requires the concurrence of the Folketing, or which otherwise is of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing.

(2) Except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign state without the consent of the Folketing. Any measure which the King may take in pursuance of this provision shall immediately be submitted to the Folketing. If the Folketing is not in session it shall be convoked immediately.

(3) The Folketing shall appoint from among its Members a Foreign Policy Committee, which the government shall consult prior to the making of any decision of major importance to foreign policy. Rules applying to the Foreign Policy Committee shall be laid down by statute.

ESTONIA

5. Which authority, in your country, is vested with the treaty-making power?

The treaty-making power lies with the *Riigikogu* (the Parliament) and the government of the Republic.

6. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The government of the Republic by its decision (in the form of a government order) authorises the negotiations for the conclusion of a treaty. The proposal to initiate negotiations is made by the Ministry of Foreign Affairs. Other ministries submit their proposals to start negotiations to the Ministry of Foreign Affairs.

7. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to the questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Signature subject to ratification is not specifically mentioned in Estonian legislative acts; however, in practice the distinction is made.

8. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is possible if the treaty provides for such signature and there are no grounds requiring ratification under the Constitution of the Republic of Estonia (see answer to 5).

9. In what cases is signature subject to ratification required?

Signature subject to ratification is required in cases of treaties:

- which alter state boundaries;
- the implementation of which requires passing, amending or repealing Estonian legislation;
- by which the Republic of Estonia joins international organisations or unions;
- by which the Republic of Estonia assumes military or proprietary obligations;
- in which ratification is prescribed.

10. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is possible where the treaty itself requires acceptance or approval. The same applies for preceding signature of the treaty.

11. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

For Estonia to sign, ratify, accept or approve a treaty, first the competent authority (usually a ministry) has to translate the treaty and prepare the legislative act (a law or a government regulation or order) authorising signature etc, as well as necessary amendments (if any) to Estonian legislation. The draft acts have to be circulated for opinion (to be given in writing) among the government and local government institutions who would have obligations under the treaty and/or draft legislation; also, NGOs concerned (if any) are consulted. The draft law or government regulation or order, together with all the responses from above-mentioned

institutions is then submitted to the Ministry of Foreign Affairs, who will present it to the government of the Republic.

In case of signature the government by its order approves* the text of treaty and authorises a person (normally a Minister, an Ambassador or Permanent Representative) to sign the treaty, or sign the treaty subject to ratification.

In case of acceptance or approval, if there are no grounds which would require ratification (see answer to 5), a government order or regulation on acceptance or approval is adopted.

If Estonian laws have to be amended to implement the treaty, the government of the Republic takes a decision to submit a draft Act of Acceptance or Approval to the Riigikogu. The Riigikogu will read it two times before passing the Acceptance/Approval Act. After that, the President of the Republic proclaims the Act. This procedure is also applied in case of ratification.

In both cases the Minister for Foreign Affairs signs the instrument of acceptance or approval. The text of the respective Act, Regulation or Order is published in *Riigi Teataja* (the Official Gazette).

12. When ratification is necessary, please specify:

    a) Which authority is competent to ratify?

The *Riigikogu* (the Parliament) ratifies the treaties on behalf of the Republic of Estonia. The instrument of ratification is signed by the President of the Republic.

    b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The Riigikogu does not need a prior authorisation to ratify a treaty.

    c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

13. In case of accession to a treaty, are there any other procedures not described above which are followed?

In case of accession the procedure is the same as described under 7. Instrument of accession is signed by the Minister for Foreign Affairs

14. Which authority decides whether:

    a) reservations should be made?

    b) reservations should be withdrawn?

    c) objections should be presented to reservations made by other States?

In principle, the government of the Republic proposes reservations to be made or withdrawn, as well as any objections to be made, together with the draft law submitted to the Riigikogu. The final decision on these issues is made by the Riigikogu.

15. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes.

16. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

* This is not approval provided for in the treaty as a means to express consent to be bound by the treaty, but a domestic procedure

The treaty becomes a part of Estonian legal system by the act of signature not subject to ratification, the ratification, acceptance, approval or accession. It shall be applied once it enters into force for Estonia.

17. What is the legal status of a treaty incorporated into the domestic law of your country?

A treaty has the same status as the legislative act according to which it was signed, ratified, accepted, approved or acceded to. The Republic of Estonia shall not conclude treaties which are in conflict with the Estonian Constitution.

18. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes.

19. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application is possible, if the treaty provides for it. So far it has been done only with regard to some bilateral agreements.

FINLAND

The new constitution of Finland entered into force on 1 March 2000. The overall aim with the enactment of the new constitution was to harmonise and update the existing constitutional acts without changing, however, the fundamental principles laid down in the constitution. The provisions concerning acceptance, denunciation and implementation of treaties and other international obligations were amended and included in Chapter 8 of the new constitution. The following answers were thus based on those provisions.

1. Which authority, in your country, is vested with the treaty-making power?

According to Section 93 of the new constitution, the foreign policy of Finland shall be directed by the President of the Republic in co-operation with the government. The President shall make the decisions concerning foreign policy in a government session, on a proposal by the government. Decisions on war and peach shall be made by the President with the consent of parliament.

The competence to conclude international agreements, belonging to the President of the Republic, may only be delegated by an act of parliament to the government, a ministry or another authority to a limited extent.

In certain cases, however, the final conclusion of a treaty is subject to a preceding parliamentary approval. Under section 94 of the new constitution such approval is necessary in respect of treaties and other international obligations which contain provisions of a legislative nature, are otherwise significant or require the consent of parliament under the constitution. Also denunciation of international obligations which cannot be entered into without parliamentary approval, must be approved by parliament.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The initiative for treaty negotiations shall be made by the President of the Republic in co-operation with the government. In practice, however, a formal decision on treaty negotiations is only made in respect of matters which are significant for foreign and security policy. The initiatives in respect of other treaty negotiations are prepared by the competent ministry in co-operation with the Ministry for Foreign Affairs. The formal initiatives, including possible draft agreements, are mainly made through the intermediary of the Ministry for Foreign Affairs.

In accordance with international practice, the Minister for Foreign Affairs signs the credentials/full powers.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The domestic legislation does not provide for a specific provision on means of expressing consent to be bound by a treaty. Under the prevailing national practice relating to treaties, despite the non-existence of a legal provision, nearly all treaties require ratification or acceptance by an act by the President of the Republic.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

In practice signature is always subject to ratification or acceptance (see question 3 above).

20. In what cases is signature subject to ratification required?

In practice signature is always subject to ratification or acceptance (see question 3 above).

21. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The legal effects of ratification and acceptance do not differ from each other. In the past few years Finland has nevertheless aimed at using the simpler acceptance procedure as far as possible, where the treaty in question allows for several means of expressing consent to be bound by it. Acceptance is preceded by signature.

22. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The measures to be taken depend on the scope of application and significance of the treaty in question. As regards less significant treaties or treaties with narrow scope of application, preparations include requests for opinions from difference competent authorities, followed by discussions between the respective authorities. As far as more extensive and significant treaties are concerned, the preparations may also include committee work. The preparatory body may be a committee set up by the government or a working group appointed by an individual ministry and it may have a variety of functions depending on the extent and significance of the matter to be prepared. In practice committees have only seldom been set up, and preparations have mainly taken place in ministries and working groups. The ministry which is responsible for the treaty preparations shall consult other relevant authorities. Even experts outside the State administration may be heard. If the treaty is submitted to parliament for approval, parliament hears experts from various authorities as well as any experts it wishes to call.

23. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The decision to express Finland's consent to be bound to a treaty, that is to ratify or accept a treaty, shall be made by the President of the Republic, on a proposal by the Minister for Foreign Affairs or another competent minister.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The consent of parliament, when necessary (see question 1) shall be obtained before making the final decisions to bind Finland by a treaty. The government shall submit a bill to that effect to parliament. The decision to approve the treaty taken by parliament and the proposal by the competent minister for a decision to bind the State by the treaty shall be considered by the President of the Republic at the same time.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

The consent of the parliament for approval of a treaty and a possible implementing act shall be introduced to the president of the Republic within 3 months from the date on which the consent has been received by the Prime Minister's Office. In case the time limit is

exceeded, the implementing act will become void and a new government bill to parliament is necessary.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

A request for the approval of parliament means a real intention of the president to ratify or accept a treaty. However, from a legal point of view parliament's approval of a treaty does not bind the President of the Republic to ratify or accept it within a certain period of time, but he or she may in principle postpone the ratification or acceptance until further notice.

24. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

25. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

The President of the Republic shall make the decision on reservation, or on the amendment or withdrawal of a reservation in a government session, on a proposal by the government.

An explicit consent of parliament is necessary when the reservation concerns a treaty provision which falls within the competence of parliament to approve international obligations. This concerns both the approval and the withdrawal of a reservation.

c) objections should be presented to reservations made by other States?

Objections to reservations made by other states are presented by the Ministry for Foreign Affairs by a note to the depository of the treaty.

26. Do treaties to which your country is a Party become incorporated into your country's domestic law?

A treaty creating international obligations for the State does not automatically become domestic law, but needs to be brought into force separately.

Under section 95 of the new constitution the provisions of treaties and other international obligations, in so far as they are of a legislative nature, shall be implemented by an act of parliament. Other international obligations shall be implemented by a decree issued by the President of the Republic.

Different methods may be used, varying from the amendment of existing rules of law or the introduction of new legislation to a statement whereby the text of the treaty or relevant provisions thereof shall have the force of Finnish law. Different methods may also be combined in the implementation of a treaty.

5. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See question 11.

27. What is the legal status of a treaty incorporated into the domestic law of your country?

Under the Finnish legal system only those international obligations which have been implemented are part of domestic law. The legal status of a treaty incorporated into the domestic law of Finland depends on the legal status of the implementing act.

28. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature of a treaty indicates intention to ratify it.

29. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application of a treaty before its entry into force is possible, if this has specifically been agreed on by the Contracting Parties to the treaty.

The normal procedure of accepting international treaties is applied to a decision on provisional application. The President of the Republic shall accept the treaty and its provisional application on a proposal by the government and, if necessary, with the consent of parliament (see question 1). The provisional application is informed by decree to which the text of the treaty is attached.

In addition it should be noted that if a treaty that Finland has concluded with a foreign state contains a provision contrary to the act on the autonomy of Åland, the provision shall enter into force in Åland only if so provided by an act enacted in accordance with the constitutional provisions required for the approval of amendments to the Constitution.

If the treaty contains a provision that according to this act is subject to the competence of Åland, the Legislative Assembly must consent to the statute implementing the treat in order to have the provision enter into force in Åland.

The Legislative Assembly may authorise the government of Åland to give the consent referred to in paragraph 2.

FRANCE

30. Which authority, in your country, is vested with the treaty-making powers?

Under Article 52 of the French Constitution of 4 October 1958, power to negotiate treaties is vested in the President of the Republic. In practice, however, only treaties in solemn form which commit the State are negotiated by plenipotentiaries authorised to do so by the President. Other agreements are negotiated on behalf of the Government by plenipotentiaries authorised to do so by the Minister for Foreign Affairs.

31. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

In the case of an agreement negotiated on behalf of the State, the President himself appoints the plenipotentiaries who are to negotiate in his name. In the case of an agreement negotiated on behalf of the Government, the Minister for Foreign Affairs is responsible for empowering the negotiators.

32. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

    a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

    b) If the answer is yes, please reply to questions 4 and following.

France recognises the principle of signature not subject to ratification. However, it rarely applies the principle but usually signs agreements subject to ratification or approval.

33. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification or approval is legally possible only if the agreement does not concern a matter which, under Article 53 of the Constitution, necessitates its ratification or approval after parliamentary authorisation.

34. In what cases is signature subject to ratification required?

Signature subject to ratification or approval is the only permissible procedure in cases where the treaty's entry into force necessitates the agreement of Parliament. Under Article 53 of the Constitution, this is the case with "peace treaties, commercial treaties, treaties or agreements concerning international organisations, treaties committing State finances, treaties amending statutory provisions, treaties concerning the status of persons and treaties involving the cession, exchange or acquisition of territory".

Ratification is required only for treaties in solemn form concluded on behalf of the State, Treaties concluded in the name of the Government are subject to approval.

35. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The concept of acceptance does not exist in French law. Approval is required only for agreements in simplified form, that is those concluded on behalf of the Government. Like ratification, approval is subject to the above-mentioned Article 53 of the Constitution.

Approval is always preceded by signature. Only accession to an agreement can occur without any signature. In practice accession, which is not referred to in the Constitution, is subject to the same substantive conditions as are laid down in Article 53 for ratification.

36. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

When the agreement has to be submitted to Parliament for ratification or approval, the ministerial departments concerned communicate their written agreement to the Minister for Foreign Affairs, who draws up a bill. The bill is submitted to the “Council of State” for an opinion, then adopted in Cabinet and tabled in Parliament. When the Parliament has authorised the act of ratification or approval, it is completely up to the Government to decide if and when the instrument of ratification or approval will be deposited.

When the agreement does not have to be submitted to Parliament for approval or ratification, the “Council of State” is not necessarily consulted and the text is not presented in the Council of Ministers. The required interministerial agreement is obtained by an exchange of letters between the departments concerned.

37. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The President of the Republic ratifies treaties in solemn form; the Minister for Foreign Affairs, acting on behalf of the Government, approves agreements in simplified form.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

When the treaty comes into one of the categories laid down in Article 53 of the Constitution, ratification or approval cannot take place until authorisation has been given by Parliament in the form of a law. When the agreement does not come into one of the categories mentioned in Article 53, it may be ratified by the Head of state or approved by the Government without the authorisation of Parliament.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline in the Constitution for requests for Parliament’s authorisation to ratify or approve an agreement. Nor is there any deadline for Parliament’s decisions.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Once authorisation has been granted by Parliament, the executive is not bound to ratify the agreement at all, let alone do so by a certain deadline.

38. In case of accession to a treaty, are there any other procedures not described above which are followed?

Although there is no provision for accession in the French Constitution, the same rules are applied to accession as to ratification.

39. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The executive is responsible for entering or withdrawing reservations and for lodging objections against reservations entered by other States.

40. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

The treaties to which France is a party are automatically incorporated into the domestic legal system.

41. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Incorporation occurs upon signature not subject to ratification or upon ratification, approval or accession, without the need for a separate statutory or administrative instrument. However, the text must be published in the Official Gazette ("Journal Officiel") to be valid vis-à-vis third parties.

42. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of agreements and treaties is defined in Article 55 of the Constitution as follows: "Duly ratified or approved treaties or agreements shall, upon their publication, have higher authority than statutes, subject, in respect of each agreement or treaty, to its application by the other party."

43. Does signature of a treaty by your country indicate a firm intention to ratify it?

As a general rule, when France signs a treaty or international agreement without ratification or approval, it is intended to become a party to it. If this is not the case, France will usually refrain from signing the instrument in question.

1. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, on condition that the treaty itself provides for such provisional application. Such an arrangement must remain the exception. Provisional application will run into obvious difficulties when ratification or approval of the agreement necessitates parliamentary authorisation.

APPENDIX

Articles of the French Constitution of 4 October 1958 relating to the Constitutional Council

"Article 54: If the Constitutional Council, the matter having been referred to it by the President of the Republic, by the Prime Minister or by the President of either Assembly, has declared that an international commitment contains a clause contrary to the Constitution, the authorisation to ratify or approve this commitment may be given only after amendment of the Constitution.

Article 56: The Constitutional Council shall consist of 9 members, whose term of office shall last 9 years and shall not be renewable. One third of the membership of the Constitutional Council shall be renewed every 3 years. Three of its members shall be appointed by the President of the Republic, 3 by the President of the National Assembly and 3 by the President of the Senate.

In addition to the 9 members provided for above, former Presidents of the Republic shall be members of the Constitutional Council ex officio for life.

The President shall be appointed by the President of the Republic. He shall have the deciding vote in the event of a tie.

Article 57: The office of member of the Constitutional Council shall be incompatible with that of minister or member of Parliament. Other incompatibilities shall be determined by an institutional Act.

Article 58: The Constitutional Council shall ensure the regularity of the election of the President of the Republic.

It shall examine complaints and shall announce the results of the vote.

Article 59: The Constitutional Council shall rule, in the event of disagreement, on the regularity of the election of deputies and senators.

Article 60: The Constitutional Council shall ensure the regularity of referendum procedures and shall announce the results thereof.

Article 61: Institutional Acts, before their promulgation, and regulations of the Parliamentary Assemblies, before they come into application, must be submitted to the Constitutional Council, which shall rule on their constitutionality. (Constitutional Act No 74-904 of 29 October 1974): "To the same end, laws may be submitted to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate or 60 deputies or 60 senators".

In the cases provided for in the two preceding paragraphs, the Constitutional Council must give it's ruling within one month. Nevertheless, at the request of the Government, in case of emergency, this period shall be reduced to 8 days.

In these same cases, referral to the Constitutional Council shall suspend the time limit for promulgation.

Article 62: A provision declared unconstitutional may not be promulgated implemented.

No appeal may be made against decisions of the Constitutional Council. They must be recognised by the governmental authorities and by all administrative and jurisdictional authorities.

Article 63: An institutional Act shall lay down rules for the organisation and functioning of the Constitutional Council, the procedure to be followed before it, and in particular the periods of time allowed for referring disputes to it."

GEORGIA

1. Which authority, in your country, is vested with the treaty-making power?

Under paragraph (1 i) Article 3 of the Georgian Constitution of 1995, foreign policy and international relations belongs to the exclusive power of Supreme national bodies of Georgia. Under paragraph (3) Article 69 of the Constitution, President of Georgia is the supreme representative of Georgia in foreign relations and in accordance with the paragraph (1) Article 73 a treaty-making power is vested in him. However, the Constitution contains no reference to any other authority to do so, but under paragraph (1) Article 4 of the Law on International Treaties of Georgia (16 October 1997), international treaties with foreign states and international organisations are concluded as follows:

a. on behalf of Georgia – interstate treaties;

b. on behalf of the executive branch of Georgia – intergovernmental treaties, and

c. on behalf of central authorities of executive branch of Georgia – interdepartmental treaties.

d. According to the Article 11 of the same law, in the first two cases the treaty-making power is vested in President of Georgia and for the interdepartmental treaties, the Minister for Foreign Affairs is empowered.

It also should be mentioned, that Georgia has ratified the Vienna Convention on the Law of Treaties, Article 7(2a) of which provides that in virtue of their functions as Head of state and government and the Minister for Foreign Affairs are empowered to conclude treaties. Since according to the Article 6 of the Constitution of Georgia, the legislation of Georgia corresponds to the universally recognised principles and norms of International Law and the Vienna Convention is the statement of the present international customary law on the subject, it is possible to conclude that treaty-making power is vested in the President of Georgia (who is the Head of state and government by virtue of Article 69 (1) of the Constitution) and in Minister for Foreign Affairs, although in some matters it tends to be reserved to President of the Republic

2. Which authority is competent to authorise negotiation and according to which procedure is authorisation given?

Under Article 11 of the Law of Georgia on International Treaties, authorisation to conduct formal negotiations is a responsibility of the President and the Minister for Foreign Affairs as a result of their treaty-making power. (See reply to question 1 above).

Georgia, being a party to the Vienna Convention on the Law of Treaties, uses a practice given in Article 7 (2) of the Convention, whereby Heads of State and government and Ministers of Foreign Affairs are not required, because of their functions, to produce of evidence of their full powers. According to Article 12 of Law of Georgia on International treaties, the head of Georgian diplomatic mission is empowered to conduct negotiations without authorisation in order to draft the text of international treaty. Under the Article 13 of the same law, authorisation shall define the object of negotiations and scope of competence. In case of interstate and intergovernmental treaties, authorisation is given by presidential order and acknowledged by the Minister for Foreign Affairs. In case of interdepartmental treaty, the Note of Ministry of Foreign Affairs acknowledges the order of the Foreign Minister

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe procedure followed in your country to express the consent of your state to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to the questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is legally possible only if the treaty does not concern a subject matter which under Article 65 of the Constitution of Georgia requires ratification by the Parliament of Georgia.

5. In what cases signature subject to ratification is required?

Under the paragraph 2 of Article 65 of the Constitution of Georgia besides the international agreements and treaties specified for ratification, it shall be compulsory to ratify any international agreement and treaty which:

a. envisages entrance of Georgia into an international organisation or interstate union;

b. is of military character;

c. concerns the territorial integrity of the State or changes the state boundaries;

d. concerns borrowing or lending by the state;

e. requires a change of domestic legislation or adoption of necessary laws and legislative acts having power of law for the implementation of international obligations.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The concept of acceptance does not exist in Georgian law. Under Article 18 of the Law of Treaties of Georgia the president of Georgia by decree may take a decision on approval of international treaty which is not subject to ratification by the Parliament of Georgia and for its entering into force the fulfilment of domestic legal procedures are required. In any event it is assumed that an agreement has already been signed.

7. In each of the situations mentioned under 3a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

a. The request on the conclusion of an international treaty submitted to the President of Georgia must include: the Georgian text of draft treaty, the opinion of the Ministry of Justice on possible legal effects, opinion of the Ministry of Finance on possible financial effects, opinion of the Ministry of Foreign Affairs on possible foreign political effects as well as opinions from all appropriate governmental bodies. It is also possible to request an opinion from other institutions.

b. If the treaty is subject to ratification, the President of Georgia will submit it to the Parliament of Georgia. The Parliamentary Committee on Foreign Affairs if necessary consults other Committees to give its opinion before the treaty reaches the parliamentary session for ratification.

44. When ratification is necessary, please specify:

   a) Which authority is competent to ratify?

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The Parliament of Georgia is the competent authority to ratify the treaties. There is no practice of prior authorisation to ratify in the Georgian legislation. There is no time limit for the parliament to act, so in practice it is possible for the Parliament to refrain from ratifying indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decided whether:

a) Reservation should be made?

b) Reservation should be withdrawn?

c) Objections should be presented to reservations made by other states?

Under Article 22 of the Law of Georgia on International Treaties, the state body that decides the binding force of treaty in question, is responsible for entering or withdrawing reservations and lodging objections against reservations made by other states.

In the case of treaties that are subject to ratification, it is the Parliament of Georgia and in the case of treaties not subject to ratification it is the executive authority.

11. Do treaties to which you country is a party become incorporated into your country's domestic law?

Yes, international treaties that entered into force in respect of Georgia are at once binding both internationally and in the domestic legal system (Article 6 of the Constitution of Georgia and Article 6 of Law of Georgia on International Treaties). They become part of legislation without any special enactment necessary to incorporate them into domestic law.

12. If so, does incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature?

See the answer to question 11 above.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Article 6 of the Constitution of Georgia provides that any international treaty and agreement, entered into force in respect of Georgia and not in contradiction with the Constitution of Georgia, takes precedence over domestic normative legal acts.

Also, the Law of Georgia on Normative Legal Acts serves the purpose of determining the role of international treaties in national law. It defines the kinds of normative acts, their hierarchy, the place of international treaties and agreements in the system of normative legal acts of Georgia. Pursuant to Article 4 of this Law, international treaties agreed to by Georgia are deemed as legal acts of Georgia. Article 19 of the Law, determining the legal hierarchy of legal acts in force in Georgia, provides that international treaties and agreed to by Georgia take precedence over the domestic normative legal acts.

Besides, provisions of the Constitution and the Law of Georgia on Normative Legal Acts are further specified by Article 6 of the Law of Georgia on International Treaties, according to which an international treaty of Georgia is an integral part of the legislation of Georgia and has a superior power under the Constitution of Georgia.

14. Does signature of treaty by your country indicate the firm intention to ratify it?

Yes, generally speaking, but not necessarily. Although the treaty would not be signed if ratification were out of the question and there is no specific time limit for ratification after signature. But is should be mentioned that as a contracting party to the Vienna Convention on the Law Treaty, Georgia is bound by Article 18 of the Convention.

15. Is a provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, it is possible, subject to the provisions of Article 25 of the Vienna Convention on the Law of Treaties.

GERMANY

45. Which authority, in your country, is vested with the treaty-making powers?

In the Federal Republic of Germany, treaty-making power at the Federal level is vested with the Federal President, the Federal Government and individual Federal ministers.

Article 59 (1) of the Basic Law confers on the Federal President the power to conclude treaties.

In practice, however, this occurs only in respect of State treaties through the issue of the instrument of ratification or accession. Intergovernmental agreements are concluded by the Federal Government, and interdepartmental agreements by the appropriate Federal ministers.

46. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

As a rule, the Federal Government or the relevant minister authorises the commencement of negotiations without any formalities. On occasion, written negotiating powers or, more frequently, credentials are issued, which are generally furnished by the Foreign Minister (or an authorised minister) on behalf of the Federal Government.

47. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

    a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

    b) If the answer is yes, please reply to questions 4 and following.

Because of its parliamentary system of government, the Federal Republic of Germany distinguishes between signature not subject to ratification and signature subject to ratification, since in the case of numerous treaties, participation of the legislative bodies is required or conclusion of treaties in two stages is necessitated by other domestic procedures.

48. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Consequently, signature not subject to ratification is only possible if no domestic steps are necessary before the treaty can enter into force or if these have already been carried out prior to signature.

49. In what cases is signature subject to ratification required?

In all other instances, signature subject to ratification is required: after signature, a second declaration is needed expressing definitive consent to be bound.

50. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is, in principle, possible under the same conditions as ratification. As a rule, it must be preceded by signature of the treaty.

51. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

For treaties which regulate the political relations of the Federation of relate to matters of Federal legislation – that is treaties which, owing to their substance, cannot be implemented under the law of the Federal Republic of Germany without an express Federal enactment – the consent of the legislative bodies is obtained after signature pursuant to Article 59 (2) of the Basic Law.

Numerous treaties require the consent of the Federal *Länder* prior to ratification. For certain treaties other requirements have to be met before they can enter into force.

52. When ratification is necessary, please specify :

    a) Which authority is competent to ratify?

    b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

    c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

    d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Where the treaty stipulates ratification, this is accomplished by the transmission or deposit of an instrument of ratification of the Federal President. Consent to the ratification of a treaty by the Federal Foreign Office is issued by the Federal Government in important cases by means of a Cabinet decision.

In so doing, it is not bound by the legislative bodies' authorisation to ratify the treaty; it may make use of this authorisation, but need not do so. It is therefore able to defer ratification indefinitely.

53. In case of accession to a treaty, are there any other procedures not described above which are followed?

Accession to a treaty is effected once the constitutional requirements are met; if prior consent by parliament is required, this is granted by means of a law on the treaty.

54. Which authority decides whether :

    a) reservations should be made?

    b) reservations should be withdrawn?

    c) objections should be presented to reservations made by other States?

In principle, it is the Federal Government that formulates or withdraws reservations or lodges objections to foreign reservations (reservations to interdepartmental agreements hardly ever occur).

55. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties to which the Federal Republic of Germany is a party are incorporated into domestic law; depending on their substance, they acquired the legal quality of laws, ordinances or administrative regulations.

There the treaty contains obligations of the State which are note immediately applicable (self-executing) it may be necessary to enact domestic implementing provisions to make them applicable for courts and administrative authorities.

56. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Independently of the nature of the treaty (see the answer to question 11), incorporation – if necessary, by means of the requisite enactment – is accomplished by the act of concluding the treaty; incorporation into domestic law takes effect at the time when the treaty becomes binding under international law (signature, ratification or time otherwise provided by the treaty).

57. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of a treaty under domestic law corresponds to the level at which it is translated into domestic law (law, ordinance or administrative regulation).

58. Does signature of a treaty by your country indicate a firm intention to ratify it?

A treaty is signed for the Federal Republic of Germany with the intention of ratifying it.

59. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional implementation of a treaty prior to its entry into force is permissible insofar as the domestic requirements are met: for instance, normative treaties may, prior to the granting of the necessary consent by the legislative bodies, not be implemented provisionally or only to the extent that they can be implemented by the executive authorities alone.

GREECE

60. Which authority, in your country, is vested with the treaty-making power?

Under article 36(1) of the Greek Constitution of 1975, the President of the Republic represents the country internationally and is vested with the treaty-making power.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

As a rule, it is the Minister competent on the matter who authorizes negotiations. Where required, credentials are issued by the Minister for Foreign Affairs. Also, Greece being a party to the Vienna Convention on the Law of Treaties, she complies with art. 7 para. 2 concerning all acts relevant to the conclusion of treaties.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The Greek Constitution does not draw such a distinction. Exceptionally, some agreements may be concluded at the moment of signature.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Agreements which fall into the categories provided for in art. 36 para. 2 of the Greek Constitution –that is agreements on trade, taxation, economic cooperation, participation in international organizations, agreements containing concessions or which may «burden»the Greeks as individuals etc. (see appendix) are subject to ratification. Agreements outside this ambit may, consequently, not be subject to ratification. Usually these are agreements of an administrative or technical character of lesser importance (e.g. protocols concluded by mixed intergovernmental committees in execution of existing conventions).

5. In what cases is signature subject to ratification required?

In all the cases which are provided for in the abovementioned article 36 para. 2.

61. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The Greek Constitution does not recognize any procedure of acceptance or approval. However, in practice, in cases not falling within the ambit of article 36 para. 2 of the Constitution, «acceptance» or «approval» is provided by the Government, usually in the form of ministerial decision or communication in the Official Gazette. In any event, signature precedes this procedure.

62. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

As regards domestic procedures, the following distinction must be drawn:

a. Where the agreement is subject to parliamentary approval, that is in all the cases of agreements concluded by ratification, the procedure described under 8(b) is followed.

b. Where the agreement does not require approval by Parliament (see reply to 4 above), it is approved, as a general rule, by a decision of the competent Minister (ministerial decision) which is published in the Official Gazette. This simplified form of approval is intended, inter alia, to bring the agreement to the attention of the authorities and individuals, thereby facilitating the execution within the State.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The authority competent to ratify on the international level is the Head of state, that is the President of the Republic.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Prior authorisation must be given in all cases where agreements come within Article 36 para 2 of the Constitution. Such agreements are subject to prior parliamentary approval which is granted by a formal Act.

The relevant legislative Bill containing the text of the agreement drawn up in at least one of its official languages and its translation into Greek, together with an explanatory memorandum provided by the competent Ministry, is prepared by the Treaty Section of the Legal Department of the Ministry of Foreign Affairs and then signed by all the Ministers concerned as well as by the Minister for Foreign Affairs. The competent Ministry generally consults the authorities and bodies concerned with the application of the agreement. The Directorate General of Public Accounts, which is part of the Ministry of Finance, then draws up a report setting out the possible expenditure to be incurred by the agreement under approval, and the competent Minister prepares a special report on the ways to cover such expenditure. This report is also signed by the Minister of Finance (art. 75 of the Constitution). The file is then sent to the Prime Minister's Legal Office which, if in agreement with the approval procedure, submits it to the legislative drafting committee, a technical body which examines the text of the domestic Bill. Then the file is sent to Parliament. There the Bill is first examined by the Parliamentary Foreign Affairs Committee and finally by the Parliament itself. Once passed, the Act is sent back to the competent Ministry which takes the necessary steps to have it signed by the President of the Republic and published in the Official Gazette (along with the text of the agreement and its translation into Greek) within one month from its being passed in Parliament (art. 42, para.1). After the publication of the Act, the Ministry of Foreign Affairs prepares the instrument - of ratification or accession - containing the consent of the State to be bound by the agreement.

c) In cases where prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline for parliamentary authorisation. However, the Act of Parliamentary approval must be published within a time-limit of one month as from its adoption.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Although parliamentary approval may have been given and the President proceeded to the publication of the law ratifying the treaty, there is no obligation to ratify on the international level.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

The ratification procedure is also followed in the case of accession.

10. Which authority decides whether:

a) reservations should be made?

Unless another specific procedure is provided for, reservations are usually included in the form of a special provision within the body of the Act by which the agreement is ratified by Parliament. The instrument of ratification includes special mention of the reservation.

b) reservations should be withdrawn?

The same procedure is followed as under (a).

c) objections should be presented to reservations made by other States?

The competent Ministry decides on the matter and the Ministry of Foreign Affairs then proceeds to the presentation of this objection to the depositary.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes, they become «an integral part of domestic Greek law»(Art. 28, para.1).

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Incorporation takes place by the Act ratifying the Agreement. No further Act is needed.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

International treaties ratified by law prevail over ordinary laws (Art. 28, para. 1).

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

In the case of bilateral treaties, ratification is usually presumed.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

As a rule, provisional application of a treaty constitutes an exceptional practice and, in any case, should be provided for in the treaty itself. Ratification by Parliament, when so required, follows.

HUNGARY

1. Which authority, in your country, is vested with the treaty-making power?

In the Hungarian Republic, it is the parliament, the President of the Republic and the government which are vested with the power to enter into treaties.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Under the current rules, the parliament and the government must give prior authorisation for negotiations to begin. However, to simplify the complicated procedure set out in the relevant legislative decree, the parliament is only required to grant prior authorisation for the most important treaties. This enables the government to authorise the signing of treaties subject, as and when necessary, to subsequent ratification by the parliament. Credentials are delivered – on behalf of the government – by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

No.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature without ratification, acceptance or approval is only legally possible – other than in cases where the relevant minister is able to submit the final text of a treaty to the government or the parliament before it is signed – if the treaty does not relate to a subject for which ratification, acceptance or approval is compulsory under the Constitution or the relevant statutory rules. This is what usually happens in the case of bilateral treaties of a technical nature.

5. In what cases is signature subject to ratification required?

Under Article 19, para. 1, signature is subject to ratification for treaties which contain international undertakings of major importance. The same applies when parliament has to give its approval for the treaty to enter into force.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Treaties entered into on the authority of the government are subject to acceptance or approval. They are generally preceded by the signature of the treaty.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

If a treaty has to be submitted to parliament for ratification, the government departments concerned are expected to send their written agreement to the minister in charge of the question, who draws up a bill. Such bills are adopted by the government and submitted to parliament. Once parliament has authorised ratification, the President of the Republic deposits the instrument of ratification.

If a treaty does not have to submitted to parliament, the text is simply subject to government approval.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

When the treaty requires ratification, the latter is carried out by the communication or deposit of an instrument of ratification by the President of the Republic.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Ratification may only occur after authorisation has been given by parliament in the form of a decision.

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

The Constitution does not set a deadline for applications to the parliament for the ratification of a treaty. Neither does it require the parliament to take its decision within a certain time.

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no deadline by which the government must proceed with ratification once authorisation has been given by parliament. In theory, Hungary could refrain from ratifying a treaty indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

Under the legislative decree on the procedure for entering into international agreements, the ratification procedure to be followed in the case of accession to a treaty is the same as that described above.

10. Which authority decides whether :

   a) reservations should be made?

   b) reservations should be withdrawn?

   c) objections should be presented to reservations made by other States?

It is the state authority vested with competence to enter into the treaty which decides whether it is necessary to make a reservation or object to reservations made by other states.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties to which Hungary is a party containing provisions relating to the rights and obligations of natural and legal persons are incorporated *ipso jur*e into domestic law. Other treaties are published in the official gazette without any particular act of transposition.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

After the ratification, acceptance or approval of a treaty, its incorporation – whereby it becomes applicable to third parties – is carried out by means of a law or a government decree.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of treaties is described in Article 7.1 of the Constitution which states that “The legal system of the Republic of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international law”.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

No.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Hungarian law on international treaties neither endorses nor prohibits the provisional application of a treaty.

ICELAND

1. Which authority, in your country, is vested with the treaty-making power?

Under Article 21 of the Constitution of Iceland treaty-making power is vested in the President of the Republic (see annexe). Under that article the consent of the Althing is required in certain cases, cf. reply to question 3 below.

Under Article 13 of the Constitution the President exercises his functions through his or her Ministers. Under Article 13 (6) of Announcement 96/1969 on the Ratification by the President of Iceland of a Regulation on the Ministries of Iceland, cf. Law 73/1969 on the Ministries of Iceland, the Ministry of Foreign Affairs is responsible for treaties with other States and their conclusion. Under Article 1 of Act 39/1971 concerning the Foreign Service of Iceland the Foreign Service is charged with the conclusion on behalf of the President of agreements with other States, unless an exception is made from this rule by legislation or by Presidential Decree.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Authorisation to conduct formal negotiations is the responsibility of the President as a corollary of the President's treaty-making power, cf. reply to question 1 above. This competence is normally exercised by the Minister for Foreign Affairs. Under Article 14 (2) of Announcement 96/1969 on the Ratification by the President of Iceland of a Regulation on the Ministries of Iceland, cf. Law 73/1969 on the Ministries of Iceland, the Ministry of commerce is responsible for the preparation and implementation of trade agreements.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The distinction between signature not subject to ratification and signature subject to ratification is found in the fact that the former is an expression of consent to be bound and the latter is not.

In Icelandic practice there is no distinction between the legal effect of the various means of expression consent to be bound, be it a) signature not subject to ratification, b) signature subject to ratification followed by ratification, c) approval or acceptance, whether or not preceded by signature, or d) accession.

In each case, before a decision is taken to express consent to be bound by a treaty the Ministry for Foreign Affairs assures itself that all constitutional requirements have been complied with and that there are no impediments to the implementation of the treaty.

Article 21 of the Constitution sets out the specific requirement that no treaty may be concluded except with the consent of the Althing if it entails renouncement or servitude on territory or territorial waters or if it implies constitutional changes. In practice, at the discretion of the Minister for Foreign Affairs, many treaties not falling clearly within these categories are submitted to the Althing for approval. In deciding on such submission the Minister assesses the importance of the subject matter dealt with by a treaty, including its possible effect on the rights of the individual and whether it has been the subject of political controversy.

Even in cases where the approval of the Althing is not sought the Minister may regard the subject matter of a treaty to be such as to require it to be brought to the attention of the President or other Ministers as an important matter. This could conveniently be done by

submitting an instrument of ratification or other form of approval to the President for signature.

Since a treaty is not of itself incorporated into the law of Iceland, cf. reply to question 11 below, in cases where legislation is necessary to implement the treaty, consent to be bound is not expressed before such legislation is enacted (unless, in exceptional circumstances, it is clear that the necessary legislation will be enacted before the treaty enters into force).

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature of a treaty without reservation as to ratification, acceptance or approval is possible following the completion of such procedures referred to in the reply to question 3 above as may be necessary before consent to be bound can be expressed.

5. In what cases is signature subject to ratification required?

The term “ratification” in Icelandic practice normally refers to the signature by the President of a formal instrument. Where it is envisaged at the time of adopting the text of a treaty that such an instrument will be obtained then the treaty will be signed subject to ratification.

If “ratification” is understood in the less formal sense as the completion of necessary procedures for entry into force the rule is that when some requirements remain at the time of signature to be complied with before consent to be bound can be expressed then the treaty will be signed subject to a reservation as to the fulfilment of those requirements, cf. reply to question 3 above. A large number of treaties have been adopted including a clause to the effect that they enter into force following notification by the parties that the constitutional requirements for entry into force had been complied with.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance and approval have the same legal effect as other means of expressing consent to be bound by a treaty.

It is immaterial whether acceptance or approval is preceded by signature or not or effected by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The procedure followed prior to expressing consent to be bound by a treaty is described in general terms in the reply to question 3 above.

The process of consultation is dependent upon the subject matter of the given treaty. In the case of a treaty dealing with matters falling within the competence of other Ministries the Ministry for Foreign Affairs seeks their views on the advisability of concluding the treaty, including whether there are any impediments to its implementation. These views are often sought at the stage of negotiation of the treaty. Similarly, the views of interested groups may also be sought.

In the case of treaties submitted to the Althing for approval officials of responsible Ministries or representatives of interested groups are often invited to participate in hearings of the Committees of the Althing to which a treaty is referred.

In the case of treaties with wide-reaching political implications a discussion might take place in a meeting of the government.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

The competence to ratify is vested in the authority vested with treaty-making power, cf. reply to question 1. As stated in the reply to question 5 above the term “ratification” is in Icelandic practice normally used to refer to the signature by the President of an instrument of ratification.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The requirements which must be met before a treaty can be ratified or consent to be bound by it is expressed by some other means are set out in replies to the foregoing questions.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

The requirements which must be met before a treaty can be ratified or consent to be bound by it is expressed by some other means are set out in replies to the foregoing questions.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There are no requirements established by law relating to deadlines. The timing of decisions to become bound by a treaty is a question of policy.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The Minister for Foreign Affairs, in accordance with the treaty-making powers described in the reply to question 1 above, decides whether a) reservations should be made, b) reservations should be withdrawn and c) objections should be presented to reservations made by other States. The consultation procedures referred to in the reply to question 7 above are applicable in this connection.

11. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

A treaty does not automatically upon entry into force for Iceland have legal effect in Iceland. In some cases implementation of a treaty requires the amendment of existing law or the enactment of a new law. Where new legislation is necessary a law is sometimes passed giving the provisions of a treaty legal effect. (As an exception to these general rules multilateral treaties on telecommunications have by law legal effect upon entry into force).

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See the replies to questions 3 and 11 above.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The provisions of a treaty which are incorporated into the domestic law have the legal status of the law incorporating them.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

In recent practice the signature of a treaty subject to ratification is not recommended unless it is clear that the treaty will be ratified in a reasonably short time.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

In principle provisional application is possible but subject to the same general rules set above on the need to assure that there are no impediments to the fulfilment of obligations set out in a treaty.

APPENDIX

Article 21 of the Constitution of the Republic of Iceland

The President concludes treaties with other States. Except with the consent of the Althing, he may not make such agreements if they entail renouncement of or servitude on territory or territorial waters of if they imply constitutional changes.

IRELAND

1. Which authority, in your country, is vested with the treaty-making power?

The government. Under Article 28.2 of the Irish Constitution, "the executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government". With specific reference to the conduct of the Foreign relations of the State, Article 29.4.1° provides that "The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government".

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The government. However, in practice, apart from negotiations regarding International Labour Organisation Conventions, which are negotiated directly by the Minister of State for Labour, Trade and Consumer Affairs acting on behalf of the Minister for Enterprise, Trade and Employment, any Minister in liaison with the Minister for Foreign Affairs can engage in negotiations. Credentials are issued by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 *(mutatis mutandis)* and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

A treaty may be signed without reservation as to ratification, provided it is possible under existing Irish law to give effect to its provisions and provided, in the case of an agreement which imposes a charge upon public funds (not being an agreement which is of a technical and administrative character) that its terms have been approved by Dail Eireann (Lower House of Parliament). See further the answers to questions 8(b) and 11 below.

5. In what cases and under what conditions is subject to ratification required?

Signature subject to ratification is the practice where legislation is necessary to give effect to the obligations of the international agreement in question or where the international agreement (not being of a technical and administrative character), imposes a charge upon public funds.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is considered equivalent to ratification.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

A Memorandum for the government is prepared by the lead Department. It is then processed by the Minister for Foreign Affairs who consults all other relevant Departments before presenting the Memorandum to the government for decision. Memoranda regarding International Labour Organisation Conventions are an exception to this procedure as they

are presented to the government by the Minister of State for Enterprise, Trade and Employment. The decision is then taken by the government. There is no obligation to consult professional or other groups although this may happen in practice.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The government. The Minister for Foreign Affairs is given authority by the government to ratify. However, in the case of International Labour Organisation Conventions, it is the Minister of State for Enterprise, Trade and Employment who is given authority by the government.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The government authorises ratification. Regard must be had to Article $29.5.2^0$ and 3^0 of the Constitution which provide that

"2 The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dail Eireann (Lower House of Parliament).

3 This Section shall not apply to agreements or conventions of a technical and administrative character."

Therefore, where the agreement involves a charge on public funds, but is not of a technical and administrative character, the relevant Minister must put forward a Motion in Dail Eireann seeking approval for the terms of the agreement. The Motion must be passed by Dail Eireann for ratification to occur.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no legal obligation under Irish law to effect ratification within any fixed period. Even when the Dail has approved the terms of an agreement, and the Oireachtas has enacted legislation enabling effect to be given to it in domestic law, there is no legal obligation to proceed to ratification.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The functions envisaged in paragraphs a, b and c are exercised by or on the authority of the government.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Not automatically. Article 29.6 of the Constitution provides that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas (the National Parliament). This has been understood to mean that legislation is required for an international agreement to become part of domestic law. The terms of the agreement itself cannot be relied upon before the Courts except insofar as they are incorporated into national legislation. They may however on occasion be invoked in support of a particular interpretation of a provision of Irish law.

With specific reference to the European Community treaties, section 2 of the European Communities Act 1972, as amended by section 2 of the European Communities (Amendment) Act 1992, provides that "the treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities and by bodies competent under the said treaties shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those treaties.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See reply to question 11.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The provision of a treaty incorporated into domestic law enjoys the same status as other domestic legislation.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The signature subject to ratification of a treaty generally indicates an intention to ratify.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The Irish legal system does not explicitly provide for provisional application. In practice, the State does not bind itself provisionally to apply an agreement unless domestic steps are not required or unless all the domestic steps which would enable it to fulfil its obligations under the agreement have been taken.

ITALY

1. Which authority, in your country, is vested with the treaty-making power?

Article 87.8 of the Italian Constitution provides that it is the President of the Republic who ratifies international treaties subject to prior authorisation of both Chambers for treaties covered by Article 80 of the Constitution (cf reply to question No. 8 below). Under Article 89 of the Constitution, for ratification by the President to be valid it must be countersigned, as is the case for any other act of the head of the state, by the Minister who proposed the ratification and assumes responsibility for it.

According to doctrine, therefore, ratification is an act which the President cannot refuse once the government has discussed and approved the measure, though he or she may request a second examination before complying. Accordingly, the power of ratification, as far as the substance is concerned, resides with the executive and in the case of the treaties covered by Article 89, it resides jointly with the executive and the legislative.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The holding of negotiations to conclude an international agreement is decided by the Ministry of Foreign Affairs following consultation of the ministries concerned. Under the terms of Article 1 of Presidential Decree No. 18 of 5 January 1967, it falls to the Foreign Ministry to take part in negotiations aimed at concluding international treaties and agreements.

This decision includes the attribution of full powers whereby the plenipotentiaries are empowered only to conduct negotiations or also to sign the text of the agreement, and even, by their signature, commit the state. However, while there are state bodies which are competent to conduct negotiations even without full powers, within the meaning of the 1969 Geneva Convention on the Law of Treaties (Article 7.2), it may happen that certain negotiations, particularly bilateral ones, are conducted informally and in such cases the powers are not assigned until the text of the agreement is virtually completed. Often powers are conferred by telegram signed by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

In the Italian legal system there is a distinction between signature not subject to ratification and signature subject to ratification. In particular, even though Article 87 of the Constitution provides only, as far as ratification by the President of the Republic is concerned, for the expression of consent to enter into an international agreement, domestic practice has nevertheless been developed and consolidated whereby the government can conclude agreements which enter into force merely as a result of the signature of the text by the plenipotentiaries, although subject to clearly defined limits (cf replies to questions 4 and 5 below). This arrangement for the conclusion of agreements in simplified form was spelt out in the Foreign Ministry's Circular No. 5 of 1996 on procedures for concluding international agreements.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The possibility of concluding agreements in simplified form in accordance with the procedure outlined above applies only to agreements implementing other international agreements and for technical administrative agreements coming under the specific competence of the authority concluding the agreement.

5. In what cases is signature subject to ratification required?

Signature must be followed by ratification for all international agreements other than those referred to in the reply to the previous question, irrespective of whether or not they require parliamentary consent within the meaning of Article 80 of the Constitution (see reply to question 8b below). In particular, as indicated in the aforementioned Circular No. 5 of 1996, the Italian legal system makes a distinction between three categories of international agreements with regard to the conclusion procedure: (1) agreements which, within the meaning of Article 80 of the Constitution, require the signatures of the plenipotentiaries, Parliament's authorisation to ratify and the ratification of the President of the Republic; (2) executive agreements, other agreements and strictly technical administrative agreements which require only the signature of the plenipotentiaries; (3) all other agreements not falling under either of the above two categories, which require the signature of the plenipotentiaries and ratification by the President of the Republic.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance and approval are possible where the agreement provides for them under the conditions stipulated in the agreement itself. Domestic procedures for Italy's expression of consent to be bound by the agreement are as set out in the replies to the previous questions as to whether or not acceptance and approval must be preceded by signature. Accordingly, where the agreement can be concluded under the simplified procedure, acceptance and approval can be reflected simply by signature. In other cases, there has to be an act of the President of the Republic, as described above. Where the agreement falls into the categories listed in Article 80 of the Constitution, parliamentary consent may also be necessary.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Given that the degree of complexity of the negotiation process, including on the domestic level, depends on the type of agreement to be concluded (multilateral or bilateral), its purpose, its form (e.g. exchange of memoranda, treaty, modus vivendi etc) and the procedure adopted for the negotiations (particularly for multilateral treaties), a distinction must be made between purely administrative agreements and others. The former, insofar as they fall under the field of competence of an individual administrative authority, are negotiated by the said authority in the performance of its discretionary power and subject to budgetary estimates. In certain cases, full powers are conferred when the text of the agreement is almost complete.

For all other agreements where the subject matter introduces innovations in relation to domestic legislation in force and which concern several departments, the Ministry of Foreign Affairs takes part in the negotiations, co-ordinating with the other departments having primary or secondary attributions and with the Ministry of Finance if the agreement commits the state to additional expenditure. Other ministries are consulted and/or kept informed of developments in the negotiations, or they also take part. Where necessary, other entities which are not part of the state administration, such as professional organisations, autonomous bodies, etc, may also be consulted.

At the end of the negotiating procedure, the draft agreement is sent to the Foreign Ministry's Diplomatic Legal Department – which in any case provides its legal assistance throughout

the negotiation phase – for it to give the go-ahead with regard to formal compliance with the regulations on the power to conclude the agreement, and so that full powers may be granted with a view to signature.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

As already stated, the competent authority for ratification is the President of the Republic in pursuance of Article 87.9 of the Constitution.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Ratification must be authorised by both Chambers where the agreements fall under Article 80 of the Constitution, that is: political treaties or those which contain legal regulations or entail modifications to the nation's territory, financial burdens or laws. As already indicated, ratification (see reply to question No. 1 above) must be countersigned by the minister who had proposed ratification and assumes responsibility for it.

Authorisation to ratify, which is a law in the purely technical and not substantive sense, is generally in the form of an ordinary law, but if the obligations resulting from the international agreement require an amendment to the Constitution or other constitutional laws, the ratification authorisation must be given by a constitutional law.

The bill authorising the ratification of international treaties must be approved by each Chamber through the normal direct procedure for debating and approving bills (Article 72.2 of the Constitution) that is in plenary session; it cannot be passed by the respective parliamentary committees acting in a legislative capacity.

Furthermore, referenda are not allowed for laws authorising ratification of international treaties (Article 75.2 of the Constitution).

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

Italian legislation does not specify the time-limits for the tabling and passing by parliament of a law authorising ratification. The ratification bill is drafted after the signature of the agreement and very often it contains not only the authorisation to ratify a given treaty but also the necessary provisions for it to be incorporated within the Italian system. Consequently, a single legislative act may contain the authorisation to ratify and the implementation arrangements for the international agreement.

Although ratification is essential for the signature of certain treaties, the authorisation to ratify does not oblige the Government (in the substantive sense) and the President of the Republic (in the procedural sense) to implement what has been authorised. This is because the authority to conclude international agreements belongs to the executive, over which Parliament may exercise its control with due regard for the democratic nature of the Italian system.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

For accessions to international treaties, the same procedures as described above are followed.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

Since, as indicated above, responsibility for the substantive decisions with regard to the conclusion of international treaties lies with the executive, choices as to reservations, the withdrawal of reservations made at the time of signature or ratification and objections to reservations made by other states fall under the discretionary power of the executive. In particular, it is the Ministry of Foreign Affairs, where applicable at the request of another government department depending on the extent of its attributions, which makes or withdraws reservations and objects to reservations made by other countries.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Both bilateral and multilateral international agreements concluded by Italy have to be incorporated into the Italian system in order to become domestic law. However, this is not determined by the Italian Constitution but rather by reference to customary international law or in line with established domestic legislative practice.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

In accordance with the above mentioned domestic legislative practice, the incorporation of an international agreement requires an act other than signature, ratification, acceptance, approval or accession. A formal legislative act of domestic law is drawn up in accordance with two procedures: special (or reference) procedure and ordinary procedure.

The special procedure consists of an implementation order stating that the treaty is to be implemented and applied within the country without any change to domestic regulations. The phrase used is usually "the Treaty shall be fully implemented". The ordinary procedure, in contrast, leads to a legislative act which establishes rules corresponding to certain international regulations. Both procedures can be used for the incorporation of the same agreement if the latter contains both self-executing provisions (in which case the implementation order can be used) and provisions which are not self-executing (in which case the ordinary procedure must be followed).

Depending on the nature of the regulations which the agreement is to amend, incorporation may be brought about by a constitutional law, an ordinary law, a Presidential decree or an administrative act.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of the international agreement generally corresponds to that of the legislative act through which it is incorporated into domestic legislation. However, both legal opinion and domestic case-law, by way of interpretation, consider that it has greater force than other domestic sources of the same status, because of the presumption of the conformity of domestic regulations with international law, the speciality principle *ratione materiae* or the legislative intention, expressed by incorporation, to regulate certain relationships in accordance with international law and to comply with international law.

It follows that the revocation or amendment of regulations introduced to bring domestic legislation in line with the treaty, on the grounds of incompatibility with a subsequent legislative text of the same status, is not permissible; in order for this to be possible, the subsequent legislative text which contains incompatibilities must explicitly stipulate the intention to revoke or amend the regulations in question.

As regards relations with the Constitution and constitutional laws, regulatory implementing acts for treaties are always subordinate to the Constitution; they may be subject to a review of constitutionality and declared null and void if they violate the Constitution. Moreover, the

Constitutional Court has often referred to treaties in constitutional matters, particularly in the field of human rights, using them as an aid to interpreting individual articles of the Constitution.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

With the exception of agreements in simplified form, in the Italian legal system, signature has the same meaning as that given by Article 10 of the 1969 Vienna Convention on the Law of Treaties. Signature serves merely to authenticate the finalised text and does not imply any commitment on the part of the state. However, from a practical point of view, generally speaking only those agreements are signed which, failing any extraordinary circumstances, are intended to be ratified subsequently.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

In the light of Italian provisions concerning the conclusion and transposition of international agreements, the provisional application of international treaties is not permissible, except in exceptional circumstances for agreements in simplified form, which have been concluded in accordance with special informal procedures.

LIECHTENSTEIN

1. Which authority, in your country, is vested with the treaty making power?

Article 8 (2) of the Constitution stipulates that treaties by which national territory is ceded, national property alienated, rights of sovereignty or State prerogatives disposed of, any new burden for the Principality or its citizens imposed or any obligation to the detriment of the rights of the People of the Principality contracted shall not be valid unless they have received the assent of the Diet. Instruments of accession or ratification need then to be signed by the reigning Prince and countersigned by the Head of Government or his deputy. This is the result of application of Article 8 (1) of the Constitution which states that the Prince shall represent the State in all its relations with foreign countries, without prejudice to the necessary cooperation of the responsible Government. The Head of Government's right to countersign has a double purpose: Formally it contains the attestation of the Prince's signature and materially the designation of a responsible person for all acts of state by the Prince who is himself, in accordance with Article 7 of the Constitution, politically and constitutionally exempt from responsibility.

Furthermore Article 66bis (1) of the Constitution stipulates that any resolution of the Diet concerning assent to a treaty must be submitted to a referendum if the Diet so decides or if not less than 1500 citizens with the right to vote or not less than four communes submit a petition to that effect within 30 days of the official publication of the resolution of the Diet.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Prince in cooperation with the Government. Accordingly, these - organs authorise the commencement of negotiations. In practice, the Government may initiate negotiations and inform the Prince on a regular basis. When the decision is taken whether and with which content a treaty shall be concluded, negotiators are chosen and legitimated by credentials issued by the Prince and countersigned by the Head of Government or his deputy.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer ist yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is only possible when the treaty in question does not have to be approved by the Liechtenstein Diet. This is, inter alia, the case when the treaty does not impose any new (financial) burden for Liechtenstein and when the Government concludes administrative or technical agreements (Verwaltungsvereinbarungen/technische Vereinbarungen) within the scope of its competence of execution (Vollzugskompetenz).

5. In what cases is signature subject to ratification required?

Signature subject to ratification is required in all other cases (see reply to 4) , particularly in respect of:

- treaties subject to approval by the Diet (See reply to question 1);

- treaties which are submitted to a referendum by resolution of the Diet or if not less than 1'500 citizens with the right to vote or not less than four communes submit a petition to that effect within 30 days of the official publication of the resolution of the Diet (Article 66bis (1) of the Constitution);
- treaties concluded by the Government, where the provisions of the treaty provide for ratification.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is considered equivalent to ratification in Liechtenstein, depending on the requirements/procedure laid down in the treaty. However, the same constitutional procedure has to be followed for all means of concluding a treaty.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interest groups?

The decision whether, with which content and with whom treaties shall be concluded is taken by the Prince together with the Government (on the basis of the respective proposal of the Government). In order to do so, both organs have to find a consensus. -. -. In the case of a positive decision in this respect, negotiators are determined by the Government and authorized by the Prince and the Government. In the case of accession to an international organisation or to a multilateral treaty, the Government gives a report to the Diet and, if necessary, obtains an expert opinion before the application for membership. Where a treaty is subject to approval of the Diet (See reply to question 1), see the procedure described under 8 b)-.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The Prince. The instrument of ratification is signed by him and countersigned by the Head of Government or his deputy.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation an what form does it take?

In certain cases the Constitution provides for approval of the Diet (See reply to question 1) before the Prince in cooperation with the Government can ratify a treaty. The form of the consent is usually - a parliamentary resolution.

c) In cases when prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No, the above-mentioned organs must not proceed to ratification within a given deadline. The consent of the Diet to a treaty is - an internal constitutional authorization of the Prince and the Government to ratify a treaty. Thus, they are free in their decision and not obliged to ratify.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

    a) reservations should be made?

    b) reservations should be withdrawn?

    c) objections should be presented to reservations made by other states?

The Constitution contains no provision on that question. According to established practice, the Prince together with the Government decides whether reservations should be made or withdrawn or whether objections should be presented to reservations made by other States. The Diet has to approve reservations (that were proposed by the Government report on the ratification of an agreement to Parliament) and has also to approve the withdrawal of a reservation (by giving its general approval that the Government can withdraw a reservation if and when circumstances later allow; or by giving its approval in a specific and individual case.

11. Do treaties to which your country is a Party become incorporated into your countries domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

No separate act is necessary to transpose treaties into domestic law. To become binding the (international) treaties must be published in the National Legal Gazette (Liechtensteinisches Landesgesetzblatt).

13. What is the legal status of a treaty incorporated into the domestic law of your country?

According to the prevailing doctrine, international treaties to which Liechtenstein is a State party have at least the status of law in the Liechtenstein domestic legal order. Their provisions are directly applicable and self-executing if they are suffently specified to be used before a court of law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes, -signature, subject to ratification, of a treaty generally indicates an intention to ratify it. -However, there is no internal legal obligation to ratify a signed treaty.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The provisional application of a treaty is not expressly provided for in the Constitution In an established practice the Government may - with the explicit consent of the Prince - provisionally apply agreements, dealing among others with the movement of goods , services and public procurement. In the "Free Trade Agreements" between the EFTA-States and third countries a paragraph concerning provisionally application of any signatory state is included in the article on entry into force. In the case of a provisional application the Government makes an appropriate declaration.

LITHUANIA

1. Which authority, in your country, is vested with the treaty-making power?

In accordance with the Article 3 of the Law of the Republic of Lithuania on International Treaties of 22 June 1999, competence on initiative to conclude an international treaty belongs to the President of the Republic, Prime Minister, Minister for Foreign Affairs and the Government.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

In accordance with Article 6 of the Law of the Republic of Lithuania on International Treaties of 22 June 1999 authorisation (full powers) to conduct negotiations shall be given by the President of the Republic or Prime Minister. The President of the Republic has that competence, when a particular treaty is a subject to ratification.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The legal system of the Republic of Lithuania provides for both means of concluding treaties in this paragraph.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is possible only when the particular treaty does not have to be approved by the Seimas of the Republic of Lithuania (Parliament).

5. In what cases is signature subject to ratification required?

In accordance with Article 138 of the Constitution of the Republic of Lithuania international treaty shall be subject to ratification when it concerns:

- the realignment of the State borders of the Republic of Lithuania;
- political co-operation with foreign countries, mutual assistance, or a treaty relating to national defence;
- the renunciation of the utilisation of, or threatening by, force as well as peace treaties;
- the stationing and status of the armed forces of the Republic of Lithuania on the territory of a foreign state;
- the participation of Lithuania in universal or regional international organisations, and
- multilateral or long-term economic agreements.

In addition to what is said above, the Article 7 of the Law of the International Treaties of the Republic of Lithuania provides, that those instruments shall be subject to ratification which concerns stationing of armed forces of a foreign state in the territory of the Republic of Lithuania or those providing other norms than Lithuanian domestic laws or when ratification is required within provisions of particular international treaties.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The legal system of the Republic of Lithuania contains only a concept of “conclusion of treaties” and does not provide any specific rules concerning accession or approval.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Treaties are prepared by the competent governmental institutions. In doing so, they shall consult other competent institutions, which may be or will be involved in the process of implementation of particular international instruments.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

Only the Seimas of the Republic of Lithuania (Parliament) is competent to ratify international treaties.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

According to domestic Lithuanian law there are no procedures other than those described above are followed in cases of accessions to a treaty (see paragraphs 4 and 7 above). Reference is made to the concept of “conclusion” as mentioned in paragraph 6.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The institution which is competent to conclude the international treaty also may decide, whether a reservation should be made or withdrawn or objections presented to reservations made by other States.

11. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

The Article 138 § 3 of the Constitution of the Republic of Lithuania provides the following: international agreements which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The incorporation of a treaty into Lithuanian domestic legal system is simply done by the mere fact of ratification.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

There is nothing more than provided in the Constitution of the Republic of Lithuania (see paragraph 11 above). However, Article 11 § 1 of the International treaties of the Republic of Lithuania provides, that international treaties of the Republic of Lithuania, which are in force must be performed (pacta suma servanda).

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The final decision on ratification is at the competence of the Seimas of the Republic of Lithuania (Parliament). However in practice only instruments? to be signed whose ratification is intended.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, but firstly, the particular treaty itself must provide for such provisional applications, and secondly should be of no obstacle within domestic law in order to properly perform obligations and commitments, provided within such treaty from the moment of its provisional application.

LUXEMBOURG

1. Which authority, in your country, is vested with the treaty-making power?

Under Article 37 of the Constitution of the Grand Duchy of Luxembourg (Revision of 25 October 1956), treaty-making power is vested with the Grand Duke.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Minister for Foreign Affairs, who, depending on the subject matter of a given treaty, delegates authority to the ministers who are technically competent and instructs them to negotiate the treaty.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes. Article 37 of the Constitution provides: "Treaties shall not take effect until they have been approved by an Act and published in the manner specified for the publication of Acts."

63. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Only in cases where the treaty is based on a basic convention which constitutes the principal convention.

64. In what cases is signature subject to ratification required?

In all other cases.

65. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Treaties must first go through the parliamentary approval procedure ("Treaties shall be approved by an Act…", Constitution, Article 37), after which an instrument of ratification or accession is deposited. Luxembourg does not have any instrument of acceptance or approval.

66. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The steps are those of the parliamentary procedure for passing a law : drafting of proposed legislation, an opinion of the State Council, the Chamber of Deputies, a 2nd vote of the Chamber of Deputies or a decision of the State Council dispensing with a second vote, then enactment, followed by publication in the Luxembourg official gazette and drawing up of an instrument of ratification or accession. Where necessary, technical opinions may be sought from competent or interested bodies (professional associations, etc.), according to the subject matter involved.

67. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

Treaties are ratified by the Grand Duke.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Yes, by an approving Act signed by the Grand Duke and countersigned by the Minister for Foreign Affairs and the minister technically responsible (that is by virtue of the subject matter).

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There are no time limits.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no time limit. In principle, it is possible to refrain from ratifying a treaty indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

The minister technically responsible for the treaty (by decision of the government Council) or the State Council, which may submit a reservation proposal to the government, or the Chamber of Deputies (for example, where a treaty is incompatible with the Luxembourg Constitution).

c) objections should be presented to reservations made by other States?

The Luxembourg government decides (at the suggestion of the minister technically responsible) whether or not to submit reservations or objections to reservations formulated by other states.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Treaties are incorporated in domestic law by the approving Act followed by publication in the official gazette. In addition, however, in some matters (e.g. criminal law) further domestic incorporation measures are necessary to ensure a treaty is properly enforced.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of an Act.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

No.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

It is possible on an exceptional basis in the case of an international treaty concerned with an international system requiring continuity (e.g. questions relating to foodstuffs or the European school). In such cases, the Luxembourg government issues a declaration of

provisional application which is subject to its then having the treaty ratified by the Chamber of Deputies. In principle, however, provisional application clauses are not allowed.

MALTA

Preface

The Constitution of Malta does not have any specific section which deals with treaty-making powers. It is also absolutely silent about the relationship between international law and municipal law.

The relevant law which regulates treaties is Chapter 304 of the Law of Malta, a copy of which is attached herewith. Once again it does not specify which person or organ has the power to make treaties. However, the Constitution of Malta is a Westminster type of Constitution with a President having limited powers and a Prime Minister presiding over a Cabinet with very far-reaching powers.

1. Which authority, in your country, is vested with the treaty-making power?

The authority is exercised by the Cabinet of Ministers and this authority may from time to time be delegated to any Minister.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Cabinet is competent to authorise negotiations and then any Cabinet decision is notified by the Cabinet Secretary to the Head of the Ministry concerned.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

The law is silent about this point. In practice signature is considered as acceptance in principle of the obligations enshrined in a treaty. Malta is required to sign treaties subject to ratification, in these cases specified in Section 3 of the Ratification of Treaties Act-1983. Where necessary, the government would start considering amending the laws or even enacting new ones to be in a position to comply with the obligations undertaken after signature and in advance of ratification.

   b) If the answer is yes, please reply to questions 4 and following.

It is the practice for the Ministry which is responsible for the execution of the obligations under the treaty, to prepare a draft of the measure needed for implementation to effect ratification after obtaining any necessary technical advice, and legal advice from the Attorney General. It then prepares a memorandum to the Cabinet of Ministers for presentation by its Minister, requisition approval to effect such implementation measure or measures, if any, for ratification of the treaty. When the Cabinet approves this, the Cabinet Secretary informs the Head of the Ministry requesting approval, that its request has been accepted. After that the implementation measure or measures if any, are effected, the Ministry concerned informs the Ministry of Foreign Affairs

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

5. In what cases is signature subject to ratification required?

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Where the provisions of Section 3 of the ratification of treaties Act – 1983 do not apply [quote Section 3 (1)], ratification, acceptance or approval is not legally required. In those

instances other than those specified in 3 (1) ratification, acceptance or approval is mandatory.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Replied to under 3 (b).

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

According to subsection (4) of section 3 of "The Ratification of Treaties Act" the ratification has to be issued under the signature of the minister responsible for foreign affairs, when the treaty affects the sovereignty of Malta or the status of Malta under international law. As far as other treaties are concerned the practice is that the Minister for Foreign Affairs ratifies such treaties as well. The Minister, however, may delegate other ministers to sign a treaty.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The law requires parliamentary approval for treaties affecting the sovereignty, independence, unity or territorial integrity or the status of Malta under international law or the maintenance or support of such status. It is also the practice to obtain such authorisation when changes in the law are affected though there is no legal obligation to do so. For other treaties no prior authorisation is necessary except for a decision of the Cabinet of Ministers.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No. Not applicable.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

The same procedures as described above are followed.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

It is the responsibility of the Cabinet of Ministers

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Certain treaties have been incorporated in Malta's domestic law "in toto". Where changes in domestic law are needed to ratify, accept or approve a particular treaty, such changes are effected either by amendments to existing laws or by enacting new laws or ministerial regulations.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Where legislative changes are necessary, incorporation becomes effective only after a separate act is passed by parliament or the ministerial regulation is necessary.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

It enjoys the same status as any other law. (The only exception is the European Convention on Human Rights which has a higher status than that or other legislation apart from the Constitution of Malta).

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Certain administrative measures may be taken but where legislation has to be enacted, the effects of a treaty will only become operative when the relevant legislation is enacted.

NETHERLANDS

68. Which authority, in your country, is vested with the treaty-making power?

The government.

The Minister for Foreign Affairs has been given a general authorisation to sign treaties and to express the consent to be bound by treaties that do not require formal ratification

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The government.

In practice, however, any minister in consultation with the Minister for Foreign Affairs may initiate negotiations.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification, acceptance or approval is possible in cases where parliamentary approval is not required, namely:

a. if the treaty is one with respect to which this has been laid down by law;

b. if the treaty is concerned exclusively with the implementation of a treaty already approved by parliament, insofar as parliament has not expressed the wish that it be submitted for approval;

c. if the treaty does not impose any considerable pecuniary obligation on the kingdom and if it has been concluded for a period not exceeding one year;

d. if the treaty is concerned with the extension of a treaty, insofar as parliament has not expressed the wish that it be submitted for approval; and

e. if the treaty is concerning with the amendment of an annex to an approved treaty, insofar as the act of approval did not stipulate otherwise.

Furthermore, signature not subject to ratification, acceptance or approval is possible in cases where it is permitted to submit a treaty to parliament for approval after it has already entered into force for the kingdom (that is in exceptional circumstances where the interests of the kingdom so require). In those cases the treaty will have to be terminated as soon as possible if parliamentary approval is withheld; the treaty should normally provide for its termination in that circumstance.

5. In what cases is signature subject to ratification required?

Ratification is necessary in cases where treaties are concluded between heads of state and where treaties provide for ratification as to the sole means of expressing the consent to be bound.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance and approval preceded by signature is indicated in cases where ratification is not required.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

a. The Council of Ministers decides on the desirability of subscribing to the treaty and whether parliamentary approval will be sought expressly or tacitly. Interest groups have already been heard at this stage.

b. If necessary the treaty is then signed by or with the authorisation of the Minister for Foreign Affairs.

c. The Head of state consults the Council of State.

d. Once the advice of the Council of State has been commented upon by government the Head of state submits the treaty to parliament for express approval or authorises the Minister for Foreign Affairs to submit the treaty to parliament for tacit approval.

e. When parliament has approved the treaty, the consent to be bound by the treaty may be expressed in the case of ratification, by the Head of state and in all other cases by the Minister for Foreign Affairs or someone authorised by the latter.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The Head of state under responsibility of the Minister for Foreign Affairs.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No prior authorisation for ratification is required. Parliamentary approval, however, must have been obtained, except in the cases mentioned under 4. However, once such approval has been obtained, there is no obligation to proceed to ratification.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

Not applicable.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

It follows from (b) that the government could refrain from ratifying indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

The government as a general rule. The government submits the reservations to parliament for approval. During the procedure of parliamentary approval parliament itself may propose that reservations are made by the government.

b) reservations should be withdrawn?

The government. The government submits the withdrawal of reservations to parliament for approval.

c) objections should be presented to reservations made by other States?

The government. The government informs parliament about the objections it intends to make to reservations made by other states en marge of the approval procedure and afterwards about further reservations it has made through publication in the Netherlands' Treaty Series.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes. If the kingdom of the Netherlands intends to become a party to a treaty, it considers whether new legislation needs to be passed implementing the treaty or whether existing legislation needs to be modified.

If so, it has to be assured that the new legislation or modification of the existing legislation will be in force at the time the treaty enters into force for the kingdom, before the kingdom gives its consent to be bound.

If it should nevertheless transpire after the kingdom of the Netherlands has become a party to the treaty that there are national legal regulations incompatible with treaty provisions, which by virtue of their contents could be binding on all persons, the treaty provisions take precedence over the national regulations, provided these treaty provisions have been published. In this connection it is important to note that in general the text of all treaties signed by the kingdom of the Netherlands or of the treaties to which the kingdom intends to accede are officially published in the Netherlands Treaties Series.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The incorporation happens either by reason of the signature not subject to ratification, acceptance or approval or by the ratification, acceptance, approval or accession. It does so at the time of the entry into force of the treaty for the kingdom.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Treaties incorporated into the domestic law of the kingdom take precedence over the domestic law (including the constitution) in case their contents could be binding on all persons.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes, unless in exceptional cases a different intention has been made clear.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, insofar as the obligations the government has to fulfil under the provisional application are within its existing competence and do not require the co-operation of parliament in order to be undertaken.

NORWAY

69. Which authority, in your country, is vested with the treaty-making powers?

The Norwegian Head of state, the King of Norway is also the highest authority in foreign affairs. According to the Norwegian Constitution, its Section 26, the King inter alia entitled to conclude the treaties on behalf of Norway. Whenever in answer to this questionnaire the competence of the Government, according to State practice since the beginning of this century. On the other hand, decisions by the Government are not formally regarded as such before they are signed by the King in a Cabinet meeting.

The King's competence to conclude treaties is not of an absolute character. Under Section 26, 2nd paragraph, certain treaties have no binding force before the Parliament (The Storting) gives its consent hereto. This applies to treaties of particular importance or treaties of particular importance or treaties whose implementation necessitates a new statute or other decision by the Parliament.

70. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Pursuant to Section 28 of the Norwegian Constitution, decisions in "cases of importance" must be made by the King in a Cabinet meeting and cannot be subject to delegation. Thus if the authorisation of negotiations is regarded as a case of importance, it is for the King to give the authorisation by Royal Decree. In less important cases the authorisation is given by the Ministry of Foreign Affairs.

When an authorisation document is needed this can be signed by the King provided that the appointment of the delegation has taken place in a Cabinet meeting. However, the documents are normally signed by the Minister for Foreign affairs of a person empowered by him.

71. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

    a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

    b) If the answer is yes, please reply to questions 4 and following.

Yes.

72. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The same rules apply for the signing of a treaty as for authorisation of negotiations or any other act (see Question 2). Thus, the Minister for Foreign Affairs may decide to sign a treaty not subject to ratification, acceptance or approval if the decision is found not to be of importance.

73. In what cases is signature subject to ratification required?

A signature subject to ratification, acceptance or approval is required if the treat in question is not yet brought before the King or the Parliament when this is necessary.

74. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

According to Norwegian law, there is, in principle, no difference between ratification, acceptance and approval.

75. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

If a treaty is of particular importance or necessitates a new statute or decision by the Parliament, the consent of the Parliament must be obtained before the ratification. Pursuant to Section 26, 2nd paragraph, of the Norwegian Constitution, the treaty is not legally binding before the Parliament has given its consent.

It should be noted that the decision on ratification or other binding steps is taken by Royal Decree after the Parliament's consent has been given, when the Parliament's co-operation is required under Section 26 of the Constitution.

76. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The King.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

As already mentioned, the consent of the parliament is required for certain treaties.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No deadlines exist.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The answer is respectively no and yes.

77. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

78. Which authority decides whether :

a) reservations should be made?

What applies to ratification also applies to reservations. The decision is taken by the King in a Royal Decree, but if the treaty is approved by the Parliament, the King can make no amendments in the reservations as they appear in the consent of the Parliament.

b) reservations should be withdrawn?

The same applies to withdrawal of reservations. The authority lies in principle with the King, but the Parliament's consent is required if the reservations earlier made appear in the consent of the latter.

c) objections should be presented to reservations made by other States?

Normally the Ministry concerned through the Ministry of Foreign Affairs, unless the case is regarded as a "case of importance" and therefore should be decided by the King in a cabinet meeting according to the Constitution, section 28.

79. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

Some treaties are incorporated directly into Norway's domestic law, while other treaties are implemented in the national legislation by separate acts satisfying the requirements in these treaties.

80. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

A separate act of legislative nature is necessary.

81. What is the legal status of a treaty incorporated into the domestic law of your country?

If the treaty is incorporated by a statute that provides the treaty with legal force, it has the same legal status as other statutes passed by the Parliament. However, statutes also those incorporating treaties, rank below the Constitution.

If the implementation takes place by giving a statute satisfying the requirements of the treaty, it is the statute that has legal validity as such, not the treaty itself.

82. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes, but no legal obligation and quite often depending on internal law modifications being decided by the parliament.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, insofar as provisional application of the treat is not inconsistent with existing legislation. Yet, the consent of the Parliament is always necessary when the treaty is of particular importance or its implementation necessitates a new statute or decision by the parliament.

POLAND

1. Which authority, in your country, is vested with the treaty-making power?

The treaty-making power is vested in the government. Under Article 146, para 4, and subpara 10 of the Constitution of the Republic of Poland of 4 April 1997 (in force from 17 October 1997) the government "concludes international treaties requiring ratification and approves and terminates other international treaties". The competence to ratify the treaty belongs to the President. In the case of the most important treaties subject to ratification consent of the Parliament is necessary.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Negotiations are authorised by the Prime Minister on a motion submitted by the competent minister. The motion has to be consulted with the Minister for Foreign Affairs. The Minister for Foreign Affairs issues credentials.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes, the Polish legal system draws a distinction between signature not subject to ratification and approval.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The Polish Constitution provides only for ratification and approval of the treaty, but the unanimous view is that the words "ratification" and "approval" as used in Article 146, para 4, sub-para 10 refer to the internal procedure only and are to be construed as covering all forms of consent to be bound by the treaty, whether acceptance, approval or accession. Thus the Polish law draws the distinction between the signature subject to ratification and the signature not subject to ratification. In any case the signature not subject to ratification requires the approval of the Council of Ministers.

If the treaty is to bind immediately after the signature, the approval must precede it. This simplified procedure is treated as an exception. Its details are regulated in the Act on international treaties of 14th of April 2000 (Dz.U.00.39.443). According to the Act the simplified procedure can be used if the treaty does not require ratification with the consent of the parliament and:

- the specific act of Parliament provides for the simplified procedure, or
- the treaty is implementing or amending another international treaty, or
- the special circumstances justify this procedure.

5. In what cases is signature subject to ratification required?

The signature subject to ratification is required if the treaty provides for it or it follows from the special circumstances. Article 89 and Article 90 of the Constitution, provide for authorisation of the Parliament for the ratification of certain categories of treaties. They imply that ratification is required in case of:

- peace treaties, political or military alliances,

- treaties concerning freedoms, rights or obligations of citizens as specified in the Constitution,
- treaties establishing the Republic of Poland membership in international organisations,
- treaties imposing considerable financial burden,
- treaties on matters regulated by statutory law or on matters for which the Constitution requires a statute,
- treaties transferring sovereign (State's) competence to an international organisation or international institution in certain matters (art. 90 of the Constitution).

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

If the Polish law does not require ratification of a treaty and special circumstances do not justify concluding the treaty by the simplified procedure (that is signature preceded by approval of the Council of Ministers), it shall be concluded by approval following the signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

In order for a treaty to be concluded by the simplified procedure it is necessary to obtain the approval of the government before signing it (or e.g. exchanging notes constituting a treaty). The motion for granting consent to conclude a treaty is submitted by the competent minister after consultation with the Minister for Foreign Affairs and other competent ministers.

Both in the case of ratification or approval the procedure is initiated by the competent minister. He must consult with the other ministers and his/her proposal and submit to the government (by the intermediary of the Minister for Foreign Affairs) the relevant motion. The government takes the decision whether to conclude the treaty or not. If the treaty requires ratification the government initiates the further steps of seeking the consent of the Parliament, if necessary, and ratification by the President.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

Treaties are ratified by the President of the Republic of Poland.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

When the subject of the treaty falls under Article 89 of the Constitution (see above point 5) ratification must be authorised by an act of Parliament – Chamber of Deputies (Sejm) and Senate. Article 90 of the Constitution provides for optional referendum in relation to treaties through which the state transfers its competence to an international organisation or international organ.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline for moving for the Parliament's consent or giving this consent.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no deadline for the President to ratify the treaty. It is possible to refrain from ratifying indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

The Polish legal system does not provide for any special procedure of accession to a treaty. The procedure of ratification or approval is applied, respectively.

10. Which authority decides whether:

a) reservations should be made?

The government as a general rule. The government submits the reservations to the Parliament for approval if the ratification of a treaty is subject of authorisation of the Parliament.

b) reservations should be withdrawn?

The government as a general rule. The government submits the withdrawal of reservations to the Parliament's approval if the treaty was subject to authorisation of the Parliament. Withdrawal of reservations to the ratified treaty is made by the President.

c) objections should be presented to reservations made by other States?

The government.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Ratified treaties form the part of the Polish legal order (Article 87 of the Constitution).

12. If so, does the incorporation happen by reason of (and at the time of) the signatures not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The incorporation happens by reason of ratification. The entry into force of the treaty for Poland and its publication in the Official Journal (Dziennik Ustaw Rzeczypospolitej Polskiej) are decisive.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Treaties ratified by the President with the authorisation of the Parliament take precedence over domestic law but not the Constitution. The legal status of the remaining ratified treaties has not settled yet. They are at least equal to acts of Parliament.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Normally yes but the ratification is not obligatory.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The Polish law does not exclude the provisional application of the treaty, though the conditions have not been settled yet.

PORTUGAL

1. Which authority, in your country, is vested with the treaty-making power?

Its Constitutional Law defines the treaty-making power of each country, as it defines the powers to negotiate and conclude treaties. And in the Portuguese legal order, the government is the authority vested with the treaty-making power.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Prime Minister, upon the initiative by the Minister for Foreign Affairs, gives the authorisation for the negotiations.

Thus, the conduction of the external policy is competence of the government, being carried out by the Minister for Foreign Affairs — *cf.*, the Constitution of the Portuguese Republic (CRP), Ministers` Council Resolution No. 17/88, of 11.05, and Article 1.º of the Institutional Act of the Ministry for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

No. In accordance with Article 8, No. 2 of the CRP, the Portuguese internal legal system does not foresee a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval.

   b) If the answer is yes, please reply to questions 4 and following.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Treaties in Solemn Form

- Negotiation: Ministry for Foreign Affairs and other ministries involved *ratione materiae*;
- Signature: Minister for Foreign Affairs or negotiator with plenipotentiary powers, in representation of the government;
- Approval: the Parliament;
- Ratification: President of the Republic
- Previous Consultation *ratione materiae*: Autonomous Regions; National Defence Superior Council; Workers` Organisations.

Simplified Agreement

- Negotiation: Ministry for Foreign Affairs and other ministries involved *ratione materiae*;
- Signature: Minister for Foreign Affairs or negotiator with plenipotentiary powers, in representation of the government.
- Approval: the Parliament or the government, in accordance with the matter of law.
- Signature: President of the Republic
- Previous Consultation *ratione materiae*: Autonomous Regions; National Defence Superior Council; Workers` Organisations.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

In the Portuguese constitutional system, the act of ratification is competence of the President of the Republic — Article 135.º, paragraph b) of the CRP.

In the pursuance of his external vocation, it is the Head of state's duty to proceed to the binding of Portugal to the international order through international treaties and, therefore, to validate those treaties in the Portuguese internal legal order — Article 8, no. 2 of the CRP and Article 14 of the Vienna Convention on the Law of Treaties.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Yes. The ratification of international treaties by the President of the Republic is subject to prior approval by the Parliament.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No. The Portuguese legal system does not contemplate the observation of a temporal requisite.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The act of ratification is characterised by being a free act.

The free nature of ratification expresses the non-obligation of the President of the Republic in ratifying a Treaty signed by Portugal. Hence, the President of the Republic has the discretionary power to decide on the proper moment to proceed to the ratification.

This characteristic of the ratification has also as its consequence the possibility given to the President of the Republic — after the Parliament or the government (accordingly to the matters of law) have approved the Treaty — of deciding:

a. to ratify the Treaty;

b. to refuse to ratify; or

c. to suscitate, prior to ratification, the preventive scrutiny of constitutionality of the Treaty by the Portuguese Constitutional Court — Article 134.º, paragraph g) and 278.º, No. 1 of the CRP. In face of this option, and if the Constitutional Court rules that a provision of any act or international agreement is unconstitutional, the act of ratification will no longer be a completely free act, as constitutional formalities will have to be accomplished in order to make the ratification act possible — Article 279.º of the CRP. Thus, and in what concerns the Head of state action, the Treaty may only be ratified after the Parliament has approved it by a two third's majority of the Members present, where that majority is larger than the absolute majority of the Members entitled to vote.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

In case of accession, the procedure followed is the same.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

The decision of making or withdrawing reservations to a Treaty is taken by the same authority competent to approve the Treaty, *that is*, the Parliament or the government.

c) objections should be presented to reservations made by other States?

The government, as it is the national organ with the competence to carry out the Portuguese external policy.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Article 8.º, No. 2 of the CRP validates the International Conventional Law, *that is*, treaties in solemn form (*"international conventions regularly ratified"*) and simplified agreements (*"international conventions regularly ... approved"*).

The incorporation of International Law in the Portuguese internal legal system is processed by force of a general clause of reception. And this technique of reception signifies that the International Law becomes relevant within our legal system (independently form its subject matter) by means of a simple legal rule: that it is publicised in the Official Bulletin, after the process of conclusion of the treaties — *"regularly ratified or approved"*.

Article 8.º, No. 2 of the CRP also implies that those international legal instruments can only be considered as being into force in the Portuguese internal order provided that Portugal is internationally subject by them. Therefore, International Conventions will only take effect in the internal order after creating a liability to Portugal and, vice versa, will release Portugal from its obligations when no longer binding.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

By means of the constitutionally disposed in Article 8.º, No. 2 of the CRP, the reception of the treaties in solemn form (*"international conventions regularly ratified"*), as well as the simplified agreements (*"international conventions regularly ...approved"*) in the Portuguese internal order, is conditioned by the verification *sine qua non* of two conditions: the strict observance of its conclusion process by Portugal — *"regularly ratified or approved"* — and its publicity in the Official Bulletin (article *supra,* conjugated with No. 1, paragraph b) and No. 2 of Article 119.º of the CRP).

It should be underlined that the act of publicity in the Official Bulletin is not, within the Portuguese legal order, an administrative act, but a mere act of efficacy; thus, after the internal process` conclusion, the incorporation of the International Conventional Law in the Portuguese legal order is made by force of the publicity (effectiveness) and exchange of instruments or exchange of notes (*vacatio legis)*.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

It has a superior legal status and prevails over the ordinary law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

No. As explained in 8. D., the signature of a Treaty by the competent Portuguese authority *ratione materiae* does not represent to the Portuguese Head of state any binding obligation to ratify.

Nevertheless, this rule does not void the observance, by Portugal, of the international relations` general principles, namely, the principle of good faith.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

By force of Article 8.º, No. 2 of the CRP, it is not admissible, within the Portuguese legal order, the use of the mechanism of provisional application of instruments of Conventional International Law, *that is*, subject to approval or ratification.

ROMANIA

1. Which authority, in your country, is vested with the treaty-making powers?

In accordance with Article 91 of the Romanian Constitution which defines the powers of the president in the foreign policy sphere, it is the president who, in the name of Romania, concludes international treaties negotiated by the government and then submits them within 60 days for ratification by parliament.

The validity of treaties concluded by the President is subject to three conditions:

- they must be negotiated beforehand by the government. Obviously, the President will be kept informed of the progress of the negotiations and may, within the scope of the presidential powers, help draw up a draft treaty that meets Romania's needs;
- signed treaties do not take effect until they have been ratified by both chambers of parliament in accordance with the procedure for passing laws;
- a signed treaty must be submitted for ratification within 60 days. However, this deadline has the value of a recommendation, and treaties do not become void if the deadline is passed.

According to Article 1 of Law No. 4/11.1.1991 on the Conclusion and Ratification of Treaties, the President represents the state in international relations and, in this capacity, is empowered to conclude treaties in the name of Romania or may grant full powers to this end to the Prime Minister, the Minister for Foreign Affairs, the other members of the government or Romania's diplomatic representatives.

The power to conclude agreements at governmental level is vested in the government, except in the case of agreements that require ratification by parliament (Article 4 of the law).

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

In accordance with the Law on the Conclusion and Ratification of Treaties, the authority responsible for authorising negotiations varies depending on the nature of the agreement or international convention.

In the case of treaties concluded in the name of Romania, full powers are granted by the President, and the government takes the necessary steps to initiate the treaty-making procedure and conduct negotiations (Article 1).

Article 2 states that in the case of agreements, conventions and other international covenants at governmental level, it is the government which is authorised to conduct negotiations and sign.

The signature on the draft treaty of the head of government or the President (depending on the kind of agreement) is sufficient to authorise the start of negotiations.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Law 4/1991 makes no provision for signature not subject to ratification or approval. Under the terms of the law, ratification is an expression of parliamentary will and approval represents the decision of the government.

83. In what cases is signature subject to ratification required?

Signature subject to ratification is required in all cases of ratification by act of parliament, as a preliminary and necessary procedure that is not sufficient, however, to cause a treaty to take effect.

84. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

In accordance with Article 5 of Law 4/91, approval is possible in the case of all agreements, conventions and other international covenants concluded at governmental level and not requiring ratification.

Signature by the heads of the ministries concerned (in the case of ministerial agreements) or the government representative (in the case of a governmental agreement) is a preliminary and necessary procedure.

85. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

In accordance with Article 7 of the law, the Ministry of Foreign Affairs initiates, negotiates and signs treaties, agreements, conventions and other international covenants concluded in the name of Romania or at governmental level. Other ministries and central government bodies that have been granted full powers and authority for this purpose may also initiate, negotiate and sign treaties, in co-operation with the Ministry of Foreign Affairs.

Depending on the particular case, drafts relating to the signature, ratification and approval of treaties or to accession or denunciation are submitted to the government by the Ministry of Foreign Affairs alone or in co-operation with the other ministries.

Prior to approval or ratification, draft treaties are submitted for opinion to the Legislative Council (Article 79 of the Constitution), whose role it is to systematise, unify and co-ordinate legislation.

86. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Ratification takes place by an act of parliament. Prior authorisation by another authority is not required.

Neither Law 4/91 nor the Constitution contain any specific provisions regarding the possibility of refraining from ratifying a treaty indefinitely.

87. In case of accession to a treaty, are there any other procedures not described above which are followed?

In the case of accession, and depending on the particular case, the procedure is similar to the ratification or approval procedure.

5. Which authority decides whether :

a) reservations should be made?

Parliament may decide to make reservations when ratifying a treaty. Depending on the type of agreement, a similar procedure applies at the time of approval by the government.

b) reservations should be withdrawn?

Earlier reservations may be withdrawn by either parliament or the government, depending on the particular case.

c) objections should be presented to reservations made by other States?

Objections to reservations may be presented by either parliament or the government.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Under the terms of Article 11 of the Constitution, treaties ratified by parliament in accordance with the law are incorporated into domestic law.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Ratification takes place by act of parliament. The clauses of a treaty are incorporated into the system of domestic laws and have the status and specific legal force of a law.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Insofar as a treaty corresponds to a law at the level of the domestic legal system, before it can become law it must be compatible with the Constitution.

An exception is made in the case of treaties relating to human rights and fundamental freedoms, which, in accordance with Article 20 of the Constitution, take precedence over domestic laws. If there are clauses in such a treaty, which are incompatible with the Constitution, reservations are made or the Constitution is amended.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature of a treaty indicates a firm intention to proceed with all the steps leading to its conclusion.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Application of a treaty is conditional on its prior ratification by parliament or approval by the government (Article 10 of Law 4/91). It is the government that takes all the necessary steps to ensure its application.

The law contains no specific provisions regarding provisional application.

RUSSIAN FEDERATION

1. Which authority, in your country, is vested with the treaty-making powers?

The President, the Government and federal executive bodies (ministries, state committees, etc.) are vested with the treaty-making power.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The President or the Government are competent to authorise negotiations. Such authorisation is issued in form of presidential or governmental decree upon a proposal from a competent federal executive body.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

If a treaty does not contain any ground for ratification, acceptance or approval it is signed not subject to ratification, acceptance or approval. When ratification, acceptance or approval are required a treaty is to be signed under such conditions.

5. In what cases is signature subject to ratification required?

According to the Federal Law on International Treaties of the Russian Federation a signature subject to ratification is required in the following cases:

- treaty implementation requires amendment of national legislation;
- treaty establishes rules, which differ from those, stipulated by national legislation;
- basic human rights and freedoms; territorial, exclusive economic zone and continental shelf delimitation constitute an object of the treaty;
- treaty on basic principles of interstate relations, matters affecting defence capability of Russia, disarmament, international arms control, maintenance of international peace and security as well as those on peace or collective security;
- treaty on participation of Russia in international organisations if such a treaty transfers some sovereign powers of the Russian Federation to an international organisation or provides that its decisions impose obligations on Russia.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval is possible when such forms of expression of consent are stipulated in a treaty. Approval is preceded by signature; acceptance may be preceded by signature or expressed instead of signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

A proposal to be bound by treaty is prepared by any federal executive body. It must be approved by the MFA of Russia and other federal executive bodies concerned. A proposal on signature, acceptance and approval of a treaty is submitted to the President or the Government. A proposal on ratification of a treaty is considered by the President or the Government. Then it is submitted to the Federal Assembly of the Russian Federation.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

The Federal Assembly of the Russian Federation is competent to ratify.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Prior authorisation to ratify is not required.

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No other procedure is required.

10. Which authority decides whether :

   a) reservations should be made?

   b) reservations should be withdrawn?

   c) objections should be presented to reservations made by other States?

A decision whether a reservation should be made or withdrawn as well as a decision concerning objections to reservations presented by other State is taken by the authority which is competent to express consent to be bound for that specific treaty.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

A treaty is incorporated into national legislation at the time of its entrance into force for Russia. No separate incorporating act of a legislative or administrative nature is necessary.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

A treaty in force for Russia is an integral part of its legal system.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature indicates an intention to become a Party to a treaty.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, if a treaty itself so provides or signatory states so agreed.

SAN MARINO

1. Which authority, in your country, is vested with the treaty-making powers

The Congress of State (government) is jointly responsible - under Article 4B of Law No. 97 of 5 September 1997, "Reform of the Congress of State" - for determining international policy: it decides on international agreements regarding international policy matters.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Under Law No. 97 of 5 September 1997, "Reform of the Congress of State", Article 13, each minister (Secretary of State) is responsible for his/her own field of competence. The Foreign Minister is responsible for the negotiation of treaties, without prejudice, however, to the possibility of delegating to another minister if the treaty falls within the field of competence of the latter. In any case, when the negotiation of a treat is of interest for more than one minister, Article 13 of this law stipulates the obligation to collaborate and see co-ordinated actions.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

Under the San Marino legal system, no distinction is made between signature without reservation of ratification and signature with reservation of ratification, acceptance and approval.

a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

Where the Republic of San Marino has participated in negotiations, the signature means that it has taken note of the adoption of an agreed text.

The ratification made by the parliament (Great and General Council) means that the State agrees to be bound by a treaty.

b) If the answer is yes, please reply to questions 4 and following.

88. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

89. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The ratification procedure is as follows:

The Foreign Minister proposes to the Congress of State to proceed with the ratification of a treaty. The Congress of State, after having considered the appropriateness of such a ratification, expresses its agreement by issuing a decision.

Then the parliamentary commission for Foreign Policy meets to express an evaluation of whether such ratification is politically appropriate and desirable. If it is, then the treaty is submitted to the Great and General Council for discussion and subsequent ratification. As a rule, the ratification of a treaty requires the majority generally needed for the approval of ordinary laws.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

As far as accession is concerned, the procedure is similar to that followed for the ratification of a treaty.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The Congress of State (government) is responsible for making and withdrawing reservations on proposals of the competent ministers.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Article 1 of law no 59 of 8 July 1974, "Declaration on the Citizens' rights and Fundamental Principles of San Marino Constitutional Order" stipulates that "the Republic of San Marino receives the rules of general international law as an integral part of its constitutional order, rejects war as a means of settling disputes between states, accedes to international conventions on human rights and freedoms".

Article 1 above, which constitutes the legal foundations for the incorporation of international provisions in the domestic legislation of San Marino, has been interpreted in different ways. A particularly interesting interpretation is one stating that Article 1 of the 1974 declaration has only the ability to cause the automatic incorporation of customary rules of international law, while this does not apply to the incorporation of international conventions, including those on human rights and freedoms for which formal ratification is a prerequisite.

A further distinction may be drawn between treaty provisions that are directly applicable domestically, because they recognise rights, which citizens can immediately claim in respect of their state, and therefore there is no need to adapt the national legislation and treaty provisions the implementation of which requires adjusting domestic law.

To make some clarifying examples:

- with regard to the former case, let us recall the European Convention on Human Rights recognising the right of individual citizens of States Parties to the Convention to appeal to the European Court of Human Rights (the Commission, prior to the entry into force of Protocol 11). Subsequent to the ratification of the Convention, San Marino citizens under the circumstances provided for by the Convention can immediately exercised these rights.
- with regard to the latter case, let us refer to the Statute of the International Criminal Court, ratified last year of San Marino: the enactment of certain provisions may be subject to the adoption of a domestic legislation.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The ratification of directly applicable conventions gives effect to their incorporation in the domestic legislation, otherwise the State would be committed to the adjustment of the relevant domestic legislation.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

A treaty incorporated by domestic legislation has the same status as the instrument of its incorporation that is ordinary law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The signature indicates support of a general character. More specifically, with regard to relevant treaties in the field of human rights, the signature is promptly followed by the ratification. In other cases, the signature means that note has been taken of the adoption of an agreed text.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

San Marino's legal system contains no provision preventing the temporary application of a treaty that has not yet entered into force. However, there are no practical examples of this matter.

SLOVAK REPUBLIC

1. Which authority, in your country, is vested with the treaty-making power?

Under Article 102/a of the Constitution treaty-making power is vested in the President. In respect to treaties that are not subject to ratification the President vests his treaty-making power to the SR government/governmental agreements and to the individual-respective Ministers /ministerial agreements.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

There is no legal procedure required to be fulfilled in order to authorise the negotiation of a treaty. The decision is generally made by executive body /government/ and usually by respective Ministers.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is possible only where the treaty in question does not have to be approved by Parliament.

5. In what cases is signature subject to ratification required?

In the case of treaties subject to parliamentary authorisation /political treaties, economic treaties of a general nature, and treaties executing by Law/ where the President has the exclusive treaty-making power.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

No legal difference is made between ratification, acceptance and approval.

The constitutional procedure to be followed is the same, irrespective of which form the expression of the consent to be bound is given. Acceptance or approval is normally chosen only if signature followed by ratification is not possible under the provisions of the treaty. They are not preceded by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Re question 4/ negotiations held by competent Ministry or other central State authority - consultation with Ministries concerned - in the case of governmental agreements approval by the government – signature

Re question 5/ negotiations held by competent Ministry or other central State authority - consultation with Ministries concerned - approval by the government - signature subject to ratification - authorisation by Parliament - ratification by the President

Re question 6/ negotiations held by competent Ministry or other central State authority - consultations with the Ministries concerned - approval by the government – signature

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The President.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Yes, the Parliament authorisation of National Council of the Slovak Republic – in the form of parliamentary resolution

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No, there is no legally established deadline.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No, there is usually no legally established deadline. The President could refrain from ratifying.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

Authorities that authorised the consent to be bound by a treaty.

b) reservations should be withdrawn?

Authorities that authorised the consent to be bound by a treaty.

c) objections should be presented to reservations made by other States?

Authorities that authorised the consent to be bound by a treaty.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Not automatically. A separate administrative act is required, if the treaty contains provisions that are not in conformity with existing laws and regulations.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

It happens by publication in the Official Collection of Laws.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Generally binding statutes and regulations could not be in contrary to treaty, which is incorporated into domestic law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

No.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes. The consent to provisional application must be given by the authority, which must give the consent to be bound by a treaty.

SLOVENIA

1. Which authority, in your country, is vested with the treaty-making power?

Authorities vested with treaty-making power in Slovenia are the government and the parliament as applicable.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The authority competent to authorise negotiations is the government and the parliamentary committee responsible for international relations. The competent ministry starts with initiative to conclude an international agreement, to which the opinions of other governmental bodies could be added. The opinion of the Minister for Foreign Affairs if mandatory in any case, the opinion of the Ministry of Finance is mandatory if the treaty requires any new or specific financial obligation. First the initiative must be approved by the government and after that by the parliamentary committee for international relations. In the case of implementation agreements it is approved by the government only.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The Slovenian legal system provides just the possibility for signature subject to ratification.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is not possible because of the constitutional requirement that treaties have to be ratified.

5. In what cases is signature subject to ratification required?

Signature not subject to ratification is required in all cases.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The Slovenian legislation does not draw any distinction between different acts of expressing consent. Acceptance or approval as an international act expressing the consent of the state to be bound by an international treaty is unknown to the Slovenian Constitution. However, in the case where acceptance or approval is required to be treated the same way as ratification. It is not necessary to be preceded by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The authority proposing the treaty has to consult with other competent authorities prior to starting the procedure with the government of Slovenia. After the government or government with the parliamentary committee for international relations agree with the initiative, the treaty may be signed by the person authorised by the government. After signing the treaty is then ratified. The Ministry for Foreign Affairs is preparing a draft law on ratification, which is approved by the government and then sent to the parliament. In the parliament it is first discussed in the Committee for International Relations, and when

approved, it is ratified in the parliament, where a simple majority is required. The only exception is in paragraph 2 of Article 68 of the Constitution, which requires a two-thirds majority in the case of a treaty on obtaining the property rights on immovable property for foreigners. As mentioned under 2, the implementation agreements are ratified by the government within regulations. The next, obligatory step is the publication in the Slovenian Official Gazette, followed by the President of Slovenia signing the instrument of ratification and depositing it.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

The authority competent to ratify is the parliament of Slovenia. Where the agreement concerned is an implementation agreement, which contains no financial obligations or adoption of the new or an amendment to an existing legislation, it is ratified by the government of Slovenia.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No prior authorisation is needed.

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

There are no special procedures for accession to the treaty. The procedure is the same as in the case of procedure for concluding a treaty but it is not preceded by signature.

10. Which authority decides whether :

   a) reservations should be made?

   b) reservations should be withdrawn?

   c) objections should be presented to reservations made by other States?

In principal, the authority to decide about reservations is the authority competent to ratify the treaty, that is government or the parliament.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties become incorporated into domestic law under the provisions of the constitution of Slovenia. However, it may be necessary to amend the domestic law, in order to comply with the provisions of the treaty. The ratified and published international treaties are directly applicable.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The treaty is incorporated into domestic law by promulgation and publication in the Official Gazette of Slovenia.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The status of the treaty under domestic law corresponds to the level at which it is ratified, either the level of law (if it is ratified by the parliament) or regulation (if it is ratified by the government). Such a law, however, is put higher in the hierarchy of the legal acts than internal laws, and regulations higher than usual regulations. The internal laws and the executive acts must be in compliance with the ratified and published international treaties.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

When a treaty is signed by Slovenia there is always the intention to ratify it afterwards.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application of a treaty before it entering into force is possible if it is requested in the initiative to conclude such a treaty. The government or, as the case may be, the Parliamentary Committee for International Relations, permits the provisional application when discussing the initiative to conclude the treaty.

SPAIN

Preface

The procedure followed by Spain for expressing its consent to be bound by a treaty is currently governed by provisions of different kinds in particular Title 4, Chapter 3 of the 1978 Constitution, the Vienna Convention on the Law of Treaties, to which Spain acceded on 2 May 1972, the Act on the Legal Regime governing the State Administration, dated 10 April 1957, and Decree 801/72 of 24 March 1972 on the organisation of the activity of the State Administration in respect of international treaties, insofar as – in the last two cases – their provisions are not at variance with the Constitution. It is precisely the need to adapt these provisions to the Constitution, which prompted the drafting of an Act to govern State activity in respect of treaties, which is currently being prepared by the Ministry of Foreign Affairs. The account given below is based mainly on the provisions currently in force, subject to a number of references to legislative policy proposals.

1. Which authority, in your country, is vested with treaty-making power?

Under Article 63 of the Constitution, it is the responsibility of the King to express the State's consent to undertake international treaty commitments.

However, Article 63 stipulates that the consent thus expressed must be in conformity with the Constitution and the law. This means that it is the government – whose powers under the Constitution include that of directing the foreign policy of the State – which concludes treaties. However, in order to safeguard the separation of powers between the legislature and the executive as provided for in the Constitution, in certain specific cases the government requires the authorisation of Parliament for the definitive conclusion of certain specific treaties.

Under Article 93 and and 94 (1) of the Constitution, treaties requiring prior authorisation from the legislative are the following:

- treaties by which an organisation or an institution is given functions derived from the Constitution;
- political treaties;
- military treaties or agreements;
- treaties that have a bearing on the territorial integrity of the State or the fundamental rights and duties set forth in Title 1 of the Constitution;
- treaties which create financial obligations for the Treasury;
- treaties, which entail the amendment or repeal of an Act or require the adoption of legislative measures for their implementation.

With regard to other treaties, the government's sole obligation is to inform Parliament immediately of their conclusion in accordance with the provisions of Article 94 (2) of the Constitution.

The Head of government and the Minister for Foreign Affairs are empowered to execute any international instrument relating to a treaty. The other members of the government must have received full authority to sign or possibly express the consent of Spain to enter into any form of treaty commitment.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Council of Ministers. It is the Ministry of Foreign Affairs, which conducts the negotiations; in practice they are carried out by diplomatic or special missions. The heads of

mission may even initial the text of the treaty, this being a different procedure from signature, which in every case requires the authorisation of the Council of Ministers. It is also possible in practice for the negotiations to begin without the formal authorisation of the Council of Ministers; in that case, the agreement of the Council of Ministers authorising the signing of the negotiated text also constitutes confirmation of the negotiations undertaken without its formal authorisation.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification as a mean of expressing consent to be bound by a treaty is only possible – under Article 15 of Decree 801/72 and in the light of the Constitution – if the treaty in question does not come under one of the categories for which prior authorisation by Parliament is essential, as mentioned above. It must be authorised by the Council of Ministers, as has also been mentioned already.

5. In what cases is signature subject to ratification required?

Signature subject to ratification is required in the case of agreements for which the expression of consent requires the prior authorisation of Parliament, and it is always required in cases where the treaty itself stipulates that the form of expression of such consent shall be ratification, which is usually the case for multilateral treaties. The bilateral treaties negotiated by Spain usually include a standard clause concerning reciprocal notification of the fulfilment of the relevant formalities required by the Constitution, in which event the normal procedure is as follows: signature, authorisation by Parliament if necessary and notification of the fulfilment of the required conditions to the other Party.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance and approval are not the subject of precise rules in Spanish law, but their validity is derived from the 1969 Vienna Convention, as well as from the fact that the Constitution itself refers to the expression of consent to enter into commitments in general, without being confined to a specific form, which is a reference to the freedom of form provided for in international law.

Consequently, acceptance or approval can indeed be used by Spain, but the practice is fairly uncommon and is confined to cases where this formula is the only one provided for in the treaty. Acceptance and approval may be preceded by signature, but they are more usually compared to accession (particularly in the case of acceptance) given the fact that this is a formula used to express delayed consent; as for approval, it may be equivalent to ratification after signature.

7. In each of the situations mentioned under questions 3 (a), 4, 5 and 6, please describe the steps, which must be followed lending to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Once the treaty has been adopted, signature by the Spanish representative usually signifies – apart from the solemn authentication of the text – a desire to initiate the process of

expression of consent to be bound by the treaty, and it requires the prior agreement of the Council of Ministers to that effect.

Nevertheless, it may be considered that the signature is already in itself the expression of consent to be bound, as already explained in the reply to question 4; it is also possible for there to be no signature as in the case of accession and, frequently, acceptance. In any event, before the deposit of the corresponding instrument, whether or not there is prior to signature, when the agreement requires the authorisation of Parliament by reason of its content, such authorisation must be obtained before the instrument can be deposited.

As for the consultation of other authorities, the only legal requirement for consultation – although its results are not binding on the government – is the one laid down in certain statutes of autonomy (laws governing the autonomous communities) for the negotiation of agreements on subjects that come within the purview of the statutes of autonomy, there are two types of clause relating the autonomous authorities to the conclusion of treaties, although the latter continues to fall within the exclusive jurisdiction of the Central government. The clauses in question concern either initiatives to encourage the State to conclude treaties of interest to the autonomous communities (particularly cultural and emigration protection treaties) or information from the State on the conclusion of treaties, which affect them. They are therefore not binding on the central executive.

8. When ratification is necessary, please specify:

   a) Which authority is competent to ratify?

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The authority competent to ratify is the King, who, as already mentioned, must be authorised to do so in advance by Parliament when the treaty is one of those covered by Articles 93 and 94 (1) of the Constitution. In such cases the Council of Ministers, which is the organ with competence to seek parliamentary authorisation, must send the treaty to Parliament within 90 days following the date on which it took the decision to proceed to ratification. However, there is not time limit after the date of signature of the agreement for seeking the authorisation of the Parliament.

Parliament, for its part, must grant or refuse authorisation within 60 days, but there is no provision for action in the event of failure to observe this time limit. On the other hand, the possibility of tacit authorisation must be ruled out, as is clear from the preparatory work on the drafting of the rules of procedure of the Chamber of Deputies. Once parliamentary authorisation has been granted, the government may ratify or not, as it sees fit, and if it decides to do so it may do so whenever it wishes, since the authorisation is non-binding. However, it must ratify in accordance with the terms expressly authorised by Parliament.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

As succession is a form of commitment that is undertaken only once, it may be compared to signature not subject to ratification like the latter, it requires the prior agreement of the Council of Ministers and it may also require prior parliamentary authorisation if the treaty to which Spain accedes is one of those covered by Articles 93 and 94 (1) of the Constitution.

10. Which authority decides whether:

a) reservations should be made?

The government, or the government and Parliament, if prior legislative authorisation is required. In the latter case, the government takes the initiative and Parliament must give its approval to those reservations; if Parliament amends the terms of the reservations or introduces new reservations, the government can only ratify the agreement in the terms authorised by Parliament.

b) reservations should be withdrawn?

The government or the government and Parliament jointly, depending on whether the treaty is of the type which requires prior legislative authorisation.

c) objections should be presented to reservations made by other States?

The government.

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the same time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of a legislative or administrative nature necessary?

In accordance with Article 96 of the Constitution, treaties must be published officially in order to be integrated into the domestic legal system. Publication in the Official Gazette is therefore all that is required for them to become part of Spanish domestic law.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

In Spanish domestic law, treaties rank above ordinary laws and below the Constitution. They cannot be the subject of amendment, derogation or suspension under the terms of a subsequent law and they also have priority over existing law. On the other hand, they cannot derogate from the Constitution, and the Constitutional Court is empowered to decide on cases of unconstitutionality under Article 161 of the Constitution.

It is, however, possible to envisage a prior amendment to the Constitution in order to conclude an agreement, which contains provisions at variance with the latter.

14. Does the signature of a treaty by your country indicate a firm intention to ratify it?

Yes, generally speaking, but not necessarily. In any event, there is no specific time limit for ratification after signature.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

This possibility is not expressly provided for, but its acceptance derives from the fact that Decree 801/72 requires the official publication of the treaty in Spain before its entry into force if agreement has been reached on its provisional application. The date of entry into force or the date on which the provisional application expires must be published subsequently.

In practice, provisional application is often allowed. If the agreement requires parliamentary authorisation, such authorisation should be sought immediately so that this provisional application does not create practically irreversible situations which might influence the freedom of Parliament to grant authorisation.

SWEDEN

1. Which authority, in your country, is vested with the treaty-making power?

Under the Swedish Constitution treaty-making power is vested in the government. Thus, according to Article 1 of Chapter 10 of the Instrument government, “any international agreement with another State or with international organisation shall be concluded by the government”.

In certain cases, however, the final conclusion of a treaty is subject to parliamentary approval. See answers 3-5 below.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The government as well as individual Cabinet Ministers may initiate negotiations. In practice, the procedure for authorising negotiations may vary from, in rare cases of great importance, a formal government decision to more or less informal decisions made by the Ministry responsible for the subject matter of the treaty, usually in consultation with the Ministry for Foreign Affairs.

Credentials and full powers, when required, are normally issued by the Minister for Foreign Affairs.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

There is no specific legal provision, which draws a distinction between signature subject to and not subject to ratification, etc.

However, Article 2 of Chapter 10 of the Instrument of government provides that the government may not conclude any international agreement binding on the Realm without the previous approval of the Riksdag (the Swedish Parliament), if the agreement presupposes any amendment or abrogation of any law or the enactment of a new law, nor if it otherwise concerns a matter in which the Riksdag shall decide. The same rule shall apply to any other treaty if it is “of major importance” in this latter case the approval of the Riksdag can be replaced by consultations with its Foreign Affairs Advisory Council (consisting of the Speaker and nine other Riksdag members).

The practical implication of this rule is that such treaties as are deemed to be subject to parliamentary approval are normally signed subject to ratification, unless the treaty itself provides that it shall be ratified.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

If the treaty does not fall under any of the categories mentioned in answer 2 above (where parliamentary approval is necessary), and if no other governmental action is required to give effect to the treaty in domestic law, signature need not be subject to ratification, etc.

5. In what cases is signature subject to ratification required?

Signature subject to ratification, etc., is the normal procedure when parliamentary approval is necessary – see answer 3 above.

It may also be used if there is a need to change governmental rules and regulations in order to give effect to the treaty in domestic law, or if it is not possible, at the time of signature, to decide upon a final date of entry into force.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

No legal difference is made between ratification, acceptance and approval.

The constitutional procedure to be followed is the same, irrespective of which form the expression of the consent to be bound is given. Acceptance or approval is normally chosen only if signature followed by ratification is not possible under the provisions of the treaty. They are not preceded by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The Instrument of government stipulates that “in preparation of government matters the authorities concerned shall be consulted with a view to obtaining the necessary information and opinions. To the extent necessary, associations and private subjects shall be given an opportunity to express their views.

The scope of such consultation is determined by the Cabinet Minister or Ministers whose responsibilities are most directly affected by the proposed treaty. It may take place at any stage before or during the negotiations as well as before signature or ratification. In matters of major importance or where substantive changes in existing legislation will have to be made, the number of consulted authorities and professional or other interested groups can be very extensive.

If the implementation of the treaty in domestic law necessitates the enactment of new legislation in certain specified fields, the government has to request the Law Council, an independent body consisting of Justices of the Supreme Court and the Supreme Administrative Court, for its opinion as to the conformity of the proposed provisions with the national legal system, before the bill is presented to the Riksdag.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The government.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The approval of the Riksdag is required in certain cases – see answer 3 above. Parliamentary approval is normally sought by means of a government “proposition” to the Riksdag, which communicates its decision to the government by means of a letter signed by the Speaker.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There are no legally established deadlines.

d) One authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Parliamentary approval is normally sought only when the government intends to ratify. It is however not legally bound to do so and may refrain from ratifying indefinitely, subject to its general constitutional responsibilities.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

The government decides whether reservations should be made or withdrawn. If parliamentary approval has to be sought – see answer above – the government will normally submit the reservations, which it intends to make at the same time. The Riksdag may also propose that reservations should be made or withdrawn.

c) objections should be presented to reservations made by other States

The government decides whether objections should be presented.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Not automatically. A separate legislation or administrative act is required, if the treaty contains provisions that are not in conformity with existing laws and regulations.

Different methods may be used, varying from amending existing rules of law or introducing new legislation to prescribing that the text of the treaty or relevant provisions thereof shall have the force of Swedish law.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See answer 11 above.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

As a general rule, treaty provisions acquire a legal status in domestic law only if they are incorporated by means of a separate legislative or administrative act. Their status is thus determined by the level of the act chosen to incorporate them.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature normally indicates an intention on the part of the government to ratify.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application of a treaty before its ratification or final entry into force is possible if the necessary legal framework exists or is provided.

SWITZERLAND

1. Which authority, in your country, is vested with the treaty-making power?

1.1 Introduction

The power to negotiate, sign and ratify (and also terminate) international treaties is vested in the Federal Council (Article 184 of the Federal Constitution). Subject to exceptions (cf para. 1.3), between signature and ratification a treaty is approved by the Federal Assembly (cf para. 1.2) and, where appropriate, by referendum, either by a majority vote of the general population (optional referendum) or, where necessary, by a majority of both the population and the cantons (compulsory referendum, cf para. 1.4).

1.2 Approval by the Federal Assembly

International treaties are generally subject to approval by the Federal Assembly (National Council and Council of States), with the exception of those which fall within the sole remit of the Federal Council, by virtue of a statute or an international treaty approved by the Federal Assembly (Article 166 para. 2 of the Federal Constitution and Section 47bisb paras. 1 and 2 of the Law on relations between the Councils).

1.3 International treaties not subject to parliamentary approval

In addition to those international treaties, which fall within its own remit by virtue of a statute, or treaty approved by the Federal Assembly, the Federal Council may conclude minor international treaties on its own authority (Section 47bisb para. 3 of the Law on relations between the Councils). The following, *inter alia*, are considered as minor treaties:

a. treaties, which do not place Switzerland under new obligations or relinquish any existing rights;

b. treaties, which serve solely to execute other treaties, which have been approved by the Federal Assembly;

c. treaties whose subject matter falls within the regulatory power of the Federal Council, in so far as the exercise of that power requires the conclusion of an international treaty;

d. treaties, which primarily concern the authorities, which regulate administrative or technical questions or which entail no major, expense.

1.4 Optional referendum of the people and compulsory referendum of the people and the cantons

Articles 140 and 141 of the Federal Constitution determine in which cases the population alone or both the population and the cantons may be required to vote on an international treaty. If the vote is unfavourable, the Federal Council is not entitled to ratify the treaty.

1.4.1 Optional referendum

Article 141, para. 1.d of the Federal Constitution provides for three cases where international treaties are subject to a referendum of the people if requested by 50,000 citizens entitled to vote or by eight cantons, namely treaties which:

- are of indefinite duration and may not be terminated;
- provide for accession to an international organisation;
- involve multilateral unification of law.

Under the terms of Article 141, para. 2 of the Federal Constitution, treaties other than those mentioned above may be submitted to optional referendum by decision of the Federal Assembly if they are treaties "of major significance".

1.4.2 Compulsory referendum

Under Article 140 para. 1.b of the Federal Constitution, two types of treaty require the dual approval of a majority of the people and a majority of the cantons, namely those involving "entry into organisations for collective security or into supranational communities".

Provision is thus made for the possibility of Switzerland joining the United Nations Organisation and the European Union, for example.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Federal Council is responsible for foreign affairs and, accordingly, is empowered to open and conduct negotiations with a view to concluding a treaty. This decision is not subject to any particular procedure. However, the Federal Assembly participates in shaping foreign policy and supervises foreign relations (Article 184 para. 1 and Article 166 para. 1 of the Federal Constitution) and the cantons participate in the preparation of foreign policy decisions which concern their powers or their essential interests (Article 55 of the Federal Constitution and Federal Law of 22 December 1999 on participation of the cantons in the foreign policy of the Confederation).

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The distinctions in question refer to certain means whereby a state expresses its consent to be bound by a treaty. These means form a part of public international law and are not as such incorporated into the Swiss legal system. The decisive criterion under Swiss law is the separation of powers in respect of the different organs of government. Thus a distinction is drawn between treaties, which may be concluded by the Federal Council alone, and those, which must be approved by Parliament (and, where appropriate, by a majority of the population and, in some cases, a majority of the cantons; see the reply to question 1).

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification is possible for all treaties falling within the exclusive authority of the Federal Council (cf para. 1.3 above and the reply to question 5 below).

5. In what cases is signature subject to ratification required?

Signature is subject to ratification for those treaties subject to approval by Parliament (cf para. 1.2 above) and consequently for all treaties subject to compulsory or optional referendum (cf para; 1.4 above). Ratification is also possible when the provisions of treaties concluded by the Federal Council in its own right offer states the choice of being bound by signature alone or by signature followed by ratification.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Swiss constitutional procedure does not provide for acceptance or approval as an expression of the Confederation's consent to be bound by a treaty. The term "approval" refers to the decision whereby the Federal Assembly accepts the treaty submitted to it and authorises the Federal Council to ratify it. However, in order to satisfy the formal requirements of certain treaties or their depositories, it may transpire that the instrument marking Switzerland's agreement to be bound by the treaty is entitled "instrument of acceptance" or "instrument of approval".

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The stages preceding signature of the treaty are identical in all four cases (cf reply to question 2). As regards the stages following signature, the following distinctions should be drawn:

a. In cases where the conclusion of the treaty falls within the sole authority of the Federal Council, the latter approves the treaty on the basis of a proposal by the competent department (ministry) and, where necessary, ratifies it. A single decision is usually sufficient. Sometimes, however, ratification may involve a separate decision.

b. Where the international treaty to be concluded must be approved by Parliament, the Federal Council submits a draft federal decree of approval to Parliament. This draft is accompanied by a message in which the Federal Council sets out the arguments in favour of approving the treaty. On adopting the proposed federal decree, Parliament approves the treaty and authorises the Federal Council to ratify it.

c. Where an international treaty is subject to a referendum, the following distinction must be drawn:

If the treaty is subject to an optional referendum and no such referendum is requested, the federal decree of approval adopted by Parliament enters into force after the three-month time limit for holding a referendum has expired. If a referendum is requested, the decree is subject to adoption or rejection by a majority of the population.

In cases where a referendum is compulsory, the decree adopted by Parliament is subject to the dual approval of a majority of the population and a majority of the cantons.

The question whether other authorities, professional groups or other persons concerned must be consulted is regulated by the Federal Council Directive of 17 June 1991 on consultation procedures and the Federal Law of 22 December 1999 on participation of the cantons in the Confederation's foreign policy. The cantons must be consulted on international treaties affecting their powers or their essential interests, or which are of significant political, economic, financial or cultural importance. The political parties represented in the Federal Assembly and, where appropriate, relevant organisations of national stature are also heard when an international treaty is of particular political significance.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The competent authority for ratification is the Federal Council.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Where the treaty is subject to the approval of the Federal Assembly, the Federal Council is authorised to have it ratified by Parliament, with or without the consent of the people and, where appropriate, the cantons, depending on whether or not the treaty is subject to a referendum (optional or compulsory). Where the treaty is not subject to approval by the Federal Assembly, the Federal Council ratifies it on the basis of its own authority.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no deadline for applying for the approval of the Federal Assembly. Nor is the latter required to give or refuse its approval within a certain deadline.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

The Federal Assembly's authorisation places the Federal Council under no obligation to ratify and comprises no deadline.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservations should be made?

The Federal Council decides what reservations should be made in respect of treaties within its own sphere of competence. Where an international treaty is subject to parliamentary approval, Parliament decides whether any reservation or reservations should be made, generally on the basis of a proposal by the Federal Council.

b) reservations should be withdrawn?

The Federal Council has the power to withdraw reservations formulated in respect of international treaties that fall within its own sphere of competence. Where international treaties are subject to approval by Parliament, the Federal Council may withdraw reservations only with the authorisation of Parliament.

c) objections should be presented to reservations made by other States?

The Federal Council is competent to present objections to reservations made by other states.

11. Do treaties to which your country is a Party become incorporated into your country’s domestic law?

Treaties that enter into force in respect of Switzerland become a part of federal law and are at once binding both internationally and in the domestic legal system.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

International treaties concluded by Switzerland form an integral part of Swiss domestic law as soon as they enter into force, without any need for a special Act to incorporate them. From that time on and for as long as the treaties remain in force for Switzerland, all the organs of state (political, administrative and judicial authorities) must respect and apply them, and individuals may rely on those of their provisions which are self-executing as a source of rights and of obligations on the authorities or, when the provisions are horizontal in scope, on other individuals. However, international treaties are binding on individuals only if they have been published.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The Federal Court and the federal authorities recognise principle of the precedence of international law over domestic law at both federal and canton level. In the event of a conflict between an international treaty and a statutory provision, the approach of the Federal Court is to interpret the latter in a manner that complies with the treaty. However, if a contradiction remains, international law takes precedence over domestic law regardless of which came first in time. On rare occasions the Federal Tribunal has been known to waive the principle of the precedence of international law on the grounds that the federal law-makers deliberately

adopted a rule they knew to be contrary to a treaty binding on Switzerland. In a recent judgment (ATF 125 II 417) the Federal Tribunal noted that the principle of the precedence of international law was particularly important where the international law contributed to the protection of human rights.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

As a general rule the Federal Council signs treaties only if it considers it can ratify them.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

By virtue of its powers and responsibilities in the field of foreign policy, the Federal Council may order the provisional application of an international treaty when the protection of Swiss interests is at stake or the particularly urgent nature of the situation makes it necessary and it is not possible to await the end of the usual parliamentary approval procedure. In urgent matters the Federal Council may also decide to apply a treaty on a provisional basis even though the conditions for its entry into force have not yet been met.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

1. Which authority, in your country, is vested with the treaty-making power?

According to the Macedonian legal system power to conclude treaties in the name of the *"the former Yugoslav Republic of Macedonia"* is vested in the President, the government and the Minister for Foreign Affairs of the *"the former Yugoslav Republic of Macedonia"* (Article 119 of the Constitution of the *"the former Yugoslav Republic of Macedonia"*, Articles 4 and 3 (2) and 16 of the Law on Conclusion, Ratification and Implementation of International Agreements).

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Authority in respect of the negotiation of the treaties – the President, the government and the Minister for Foreign Affairs are vested in the *"the former Yugoslav Republic of Macedonia"* and carried out by the Executive.

The "technically competent" departments are consulted and they often play a dominant role.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The Macedonian legal system provides for both means of concluding treaties mentioned in this paragraph.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature not subject to ratification, is possible only where the treaty in question does not have to be ratified by the Parliament. For example, treaty concluded between the government and the international organisation, or protocols different programmes, administrative agreements or agreements on technical co-operation.

5. In what cases is signature subject to ratification required?

Signature subject to ratification is possible only where the treaty in question have to ratified by the Parliament.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The Macedonian Constitution and the Law on Conclusion, Ratification and Implementation of International Agreements, only contain the concept of "conclusion" which comprises all forms of concluding treaties.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The treaties are prepared by the competent administrative authorities, in doing so, they consult other authorities. As soon as they are prepared, they are submitted to the government. Treaties which require parliamentary approval are submitted by the government to the parliament for ratification.

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The Parliament of the *"the former Yugoslav Republic of Macedonia"* is competent to ratify.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

No.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no deadline for parliament to proceed to ratification.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No procedure other than those described above are followed in case of accessions to a treaty.

10. Which authority decides whether:

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The authority in the State which is authorised to conclude the treaty, also decides whether a reservation should be made or withdrawn or objections presented to reservations made by a third state.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

In principle, all treaties become incorporated into domestic law with their promulgation.

The treaties ratified in accordance with the Constitution are part of domestic legal order and cannot be changed by law. (Article 118 of the Constitution of *"the former Yugoslav Republic of Macedonia"*).

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

To become effective at the domestic level, the treaty which is already ratified by parliament, requires promulgation by the President of *"the former Yugoslav Republic of Macedonia"*.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Treaties are considered to be a special type of a legal norm in *"the former Yugoslav Republic of Macedonia"*. Ratified treaties have the status of an ordinary law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The final decision on ratification lies with the parliament but in administrative practice, normally, only treaties who ratification is intended to be signed.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The Macedonian Constitution and the Law on Conclusion, Ratification and Implementation of International Agreements do not provide for the provision application of treaties.

TURKEY

1. Which authority, in your country, is vested with the treaty-making powers?

According to the Turkish Constitution the treaty-making power is vested with the President of the Republic.

The President of the Republic exercises this power through a Decree of the Council of Ministers.

The authorisation to ratify a treaty is to be given by the Grand National Assembly, with some exceptions.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Council of Ministers is competent to authorise negotiations, and the authorisation is given by a Decree of the Council of Ministers.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

According to Turkish law, signing of an international treaty is subject to ratification by the President of the Republic. This ratification is subject to adoption by the Grand National Assembly of a law authorising the ratification, with the exception of those treaties made for the implementation of a previous treaty or those treaties of economic, commercial, technical or administrative nature concluded on an authorisation given by law.

90. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Acceptance or approval does not exist in our legal system.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The decision to bind the State is taken by the Council of Ministers as a result of a series of consultations among the interested services of the Administration.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

The President of the Republic, as described in No 1 is competent to ratify a treaty.

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The ratification of treaties concluded with foreign States and international organisations on behalf of the Turkish Republic, with some exceptions, is subject to adoption by the Grand National Assembly of Turkey of a law authorising the ratification.

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

In cases when a prior authorisation is required, it is not necessary to apply for it within a certain deadline and the decision of the authorising authority need not be taken within a certain deadline.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Once authorisation to ratify a treaty is granted, the competent authority is not bound to ratify within a certain deadline. It could refrain from ratifying indefinitely.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

In case of accession to a treaty, there are no other particular procedures not described above.

10. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The ratifying authority decides whether reservations should be made or withdrawn, and objections should be presented to reservations made by other States.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties to which Turkey is a party become incorporated into the country's domestic law.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The incorporation happens at the time of coming into force of a treaty.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

International treaties duly put into effect, carry the force of law. No appeal to the Constitutional Court can be made with regard to these treaties on the ground that they are unconstitutional.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

The signing of a treaty by Turkey is the indication of a firm intention to ratify it.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The provisional application of a treaty before its ratification is exceptionally possible in the Turkish legal system.

Indeed, provisional application is only possible when the provisions of the treaty are consistent with the existing legislation and when the authorisation to ratify by the parliament is not necessary.

UKRAINE

1. Which authority, in your country, is vested with the treaty-making powers?

The President of Ukraine, the Government (Cabinet of Ministers) of Ukraine and the central executive authorities are vested with the treaty-making power.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

As to international treaties of interstate character, the negotiations and signing are authorised by the President of Ukraine as to international treaties of intergovernmental character, those are authorised by the Cabinet of Ministries of Ukraine. As to international treaties of interdepartmental character, those are authorised by ministries and departments, which are in charge of issues regulated by such treaties on approval by the Ministry of Foreign Affairs and on authorisation by the Cabinet of Ministers. Negotiations are authorised on a proposal submitted by a ministry or department in charge of concluding a treaty. The President of Ukraine, the Prime Minister of Ukraine and the Minister for Foreign Affairs of Ukraine are entitled to carry out negotiations and to sign international treaties ex-officio.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis)* and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes, it does.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The treaties that are not subject to ratification, approval or acceptance enter into force at the moment of their signing (see the following paragraphs).

5. In what cases is signature subject to ratification required?

The following international treaties of Ukraine are subject to ratification: political (on friendship, mutual assistance and co-operation, on neutrality), general economic treaties (on economic, scientific and technical co-operation), on general financial issues, on loans and credits, territorial and peace treaties;

a. related to human rights and freedoms;

b. on citizenship;

c. on membership in interstate unions and other interstate associations (organisations), in collective security systems;

d. on military assistance and on sending Ukraine's military contingents/units abroad or admittance of other countries' military forces in to the territory of Ukraine;

e. on the historical and cultural heritage of the Ukrainian people;

f. those treaties which implementation requires amendments to the laws in force in Ukraine;

g. other treaties which ratification is envisaged by the law or by an international treaty itself.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

International treaties, which do not require ratification, but do not enter into force upon signature, require approval. Approval is preceded by signature. That international treaty consent to be bound by which for Ukraine requires adoption of a special law or decree, where the treaty does not provide for signature, is submitted for acceptance.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

If an international treaty is subject to ratification, approval or acceptance, the ministry or department responsible for the issues dealt with by the treaty, submits for approval a draft legal act (Decree of the Cabinet of ministers, Decree of the President, Law of Ukraine) to the ministries and departments concerned. In all cases Ministry for Foreign Affairs and Ministry of Justice approval is required. Once all ministries concerned have given their approval, the Ministry of Foreign Affairs submits the draft legal act to the President of Ukraine in the case of interstate treaties, or to the Cabinet of Ministers of Ukraine in the case of intergovernmental and interdepartmental treaties.

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Under the Constitution of Ukraine ratification of international treaties of Ukraine is an exclusive competence of the Verkhovna Rada (the Parliament) of Ukraine. The ratification procedure is not limited to a particular period of time. It depends on the agenda of the Parliament itself.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

The procedure of accession is similar to ratification where accession requires adoption of a relevant law or to approval where it requires the issuing of a decree of the Cabinet of Ministers.

10. Which authority decides whether :

   a) reservations should be made?

   b) reservations should be withdrawn?

   c) objections should be presented to reservations made by other States?

The body, which adopts decision on expressing consent of Ukraine to be bound by an international treaty (see paragraphs 7-8), is entitled to make or withdraw reservations or objections to reservations.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

International treaties that are in force, consented to be bound by the Verkhovna Rada, are part of the national legislation of Ukraine.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

Incorporation happens by virtue of the adoption of law on ratification, acceptance or accession. No separate act of legislation or administrative nature is necessary for the incorporation.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Under the Ukrainian legal system, treaties for which consent to be bound was expressed by the parliament rank as a Ukrainian law, but below the Constitution. To conclude a treaty derogating from the Constitution of Ukraine amendments to the former are necessary.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

There is no obligation under the national legislation of Ukraine to ratify an international treaty, which have been previously signed, but a treaty, which requires ratification, is generally signed by Ukraine with the intention of ratifying it. The national legislation of Ukraine also does not provide for specific time limits for ratification after signature. As a state Party to the 1969 Vienna Convention on the law of treaties, Ukraine is bound by Article 18 of the Convention.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The provisional application is not explicitly provided for in Ukrainian law, but it is applied in practice based on the relevant provisions of the 1969 Vienna Convention.

UNITED KINGDOM

1. Which authority, in your country, is vested with the treaty-making power?

Treaty-making power is vested in the Crown and is exercised by Ministers of the government acting on behalf of the Crown.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The competence to authorise negotiations primarily rests with the Foreign and Commonwealth Office who may in turn look for advice to the government Department responsible for the subject matter of the treaty. If such a government Department should itself propose to enter negotiations with another State, it would normally seek the advice of the Foreign and Commonwealth Office before taking any initiative and the Foreign and Commonwealth Office would in any event maintain a certain degree of control and co-ordination. There is no special procedure for authorising negotiations, which may be initiated by correspondence or a meeting.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

The practices and procedures followed in the United Kingdom enable the United Kingdom to accept any of the stated methods of expressing consent to be bound by a treaty.

It is the practice to secure the enactment by Parliament of any legislation necessary for the implementation of the treaty in domestic law. Before the United Kingdom government expresses its consent to be bound by the treaty, it secures the enactment of such legislation.

Whether or not implementing legislation is necessary, the government has regard to a constitutional practice known as the Ponsonby Rule, under which any treaty requiring ratification (or acceptance, accession, approval or mutual notification of completion of constitutional and other procedures) is normally laid before Parliament for a period of 21 sitting days accompanied by an Explanatory memorandum which brings to the attention of the Parliament the main features of the treaty, before the instrument of ratification is deposited.

Apart from the operation of the Ponsonby Rule, there have been occasions when draft treaties have been laid before Parliament after initialling and before signature, usually where there has been considerable Parliamentary interest in the content of the proposed treaty. Otherwise, if ratification is not required, the text is merely laid before Parliament and published in the Treaty Series after entry into force.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

If there is no need for legislative action in order to give effect to a treaty in domestic law, signature need not be subject to ratification.

5. In what cases is signature subject to ratification required?

While there is no strict requirement in the United Kingdom, in any particular case for signature to be subject to ratification, the more normal practice in the case of a treaty requiring implementing legislation is for the United Kingdom to sign subject to ratification and then to proceed with legislative action before ratification.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

It is possible for the United Kingdom to accept or approve a treaty. Such acceptance or approval is treated as having equivalent effects to ratification and the United Kingdom therefore follows the same procedures as set out in answers 3, 4 and 5 above. Acceptance or approval are not preceded by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

Steps, which must be followed leading to the decision to bind the State, are specified in answer 3 above. It is usual for the Foreign and Commonwealth Office (or the government Department whose responsibilities are most directly affected by the treaty) to consult with other government departments who have an interest in the subject matter.

If the treaty is laid before Parliament under the Ponsonby rule (see 3 above), the outcome of any consultations with interested parties (eg. overseas territories, the business community, special interest groups) should be summarised in the accompanying explanatory memorandum).

8. When ratification is necessary, please specify :

a) Which authority is competent to ratify?

The Crown, acting on the advice of Ministers and acting through the Secretary of State for Foreign and Commonwealth Affairs.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Prior authorisation may sometimes be required, depending on the subject matter of the treaty. In practice, formal authority from the Ministry responsible for the implementation of the treaty is obtained before the Secretary of State for Foreign and Commonwealth Affairs proceeds with ratification, approval or acceptance.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

i. There is no legally established deadline. If a deadline is set, it will have been set as a requirement of policy, not of law ;

ii. there is no such requirement in the United Kingdom;

iii. not applicable.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

i. There is no legal requirement to do so, but if the authorisation to ratify contains a deadline it will, of course, in practice to met.

ii. Any delay in ratification, once authorisation is given would be attributable to policy considerations determined by the competent authorities.

91. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

1. Which authority decides whether :

a) reservations should be made?

b) reservations should be withdrawn?

c) objections should be presented to reservations made by other States?

The authority which ultimately decides (a), (b) and (c) is the Crown who acts upon the advice of ministers. In practice, in making these decisions the Crown will act upon the advice of the ministers primarily responsible for the implementation of the treaty who will receive, as appropriate, advice from the legal advisers of the Foreign and Commonwealth Office and other government departments.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

No. If any provision of a treaty requires implementation in the domestic law of the United Kingdom, legislative action is taken. Under the act of Parliament giving effect to the accession of the United Kingdom to the European Community, when certain Community treaties are entered into, they operate in domestic law without the need for any further legislative action.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See the answers to 3 and 11 above.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

If a law is made to give effect to the provisions of a treaty, that law has the same status as any other law of the same type.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature, subject to ratification, of a treaty by the United Kingdom normally indicates an intention on the part of the government to proceed to ratification in due course.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes. If, however, changes in the domestic law of the United Kingdom were necessary to enable the United Kingdom to give provisional effect to the treaty, appropriate legislative action would need to be taken.

BOSNIA AND HERZEGOVINA

1. Which authority, in your country, is vested with the treaty making power?

In conformity with Article V. 3(d) of the Constitution of Bosnia and Herzegovina (Bosnia and Herzegovina), the Presidency of Bosnia and Herzegovina has responsibility for negotiating, denouncing, and, with the consent of the Parliamentary Assembly of Bosnia and Herzegovina, ratifying treaties of Bosnia and Herzegovina.

Each Entity (Federation of Bosnia and Herzegovina and Republika Srpska) may also, in conformity with Article 111 2(d) of the Constitution of Bosnia and Herzegovina, enter into agreements with states and international organisations with the consent of the Parliamentary Assembly of Bosnia and Herzegovina. The Parliamentary Assembly of Bosnia and Herzegovina may provide by law that certain types of agreements do not require such consent.

In conformity with Article 3 of the Law on Procedure for Concluding and Implementing International Treaties (Official Gazette of Bosnia and Herzegovina No 29/2000) the Presidency of Bosnia and Herzegovina may authorise the Council of Ministers of Bosnia and Herzegovina and other relevant State bodies to conclude a particular international treaty.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

Negotiations are authorised by the Presidency of Bosnia and Herzegovina on its own initiative or upon receipt of the proposal from the Council of Ministers of Bosnia and Herzegovina.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

There are no constitutional or legal provisions in Bosnia and Herzegovina that draw a distinction between signature not subject to ratification and signature subject to ratification.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval possible?

In our legal practise, signature not subject to ratification is possible when a treaty (executive agreement) is concluded for the purpose of implementation of the already existing bilateral or multilateral treaty to which Bosnia and Herzegovina is a party. If this is a case, the Council of Ministers of Bosnia and Herzegovina gives its approval for signing such agreement.

5. In what cases is signature subject to ratification required?

Signature subject to ratification is required in all cases except for executive agreements.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Legislation of Bosnia and Herzegovina does not draw any distinction between different acts of expressing State consent. Acceptance or approval as an international act expressing the consent of the state to be bound by an international treaty is unknown to the Constitution of Bosnia and Herzegovina too. However, in the case where acceptance or approval is required the procedure for ratification has to be fulfilled. It is not necessary to be preceded by signature.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The initiative for commencement of the procedure for conclusion of international treaty may be given by the institutions of Bosnia and Herzegovina, Entities, Cantons and other regional and local communities, companies, institutes and other legal persons (including non governmental organisations) from the area of their responsibilities.

The authority proposing the treaty submits the initiative for conducting the negotiations and concluding the international treaty to the Ministry of Foreign Affairs of Bosnia and Herzegovina for its opinion. This initiative includes, i*nter alia*, a draft of the treaty, reasons for its conclusion and determination whether the conclusion of an international treaty requires amendments of the existing national laws.

The Ministry of Foreign Affairs of Bosnia and Herzegovina submits this initiative together with its opinion to the Council of Ministers of Bosnia and Herzegovina.

The Council of Ministers of Bosnia and Herzegovina considers the submitted initiative and adopts a Proposal for commencement of the procedure for conducting the negotiations and concluding the treaty, and submits such Proposal to the Presidency of Bosnia and Herzegovina for its decision authorising the opening of negotiations.

During the negotiations, Bosnia and Herzegovina is represented by the delegation designated by the Presidency of Bosnia and Herzegovina or, upon its authorisation, by the Council of Ministers of Bosnia and Herzegovina.

The treaty is signed by the person authorised by the Presidency of Bosnia and Herzegovina.

After signing, the treaty passes the procedure for ratification.

The Ministry of Foreign Affairs of Bosnia and Herzegovina submits to the Council of Ministers of Bosnia and Herzegovina a draft decision on ratification. The Council of Ministers of Bosnia and Herzegovina adopts the Proposal of Decision on ratification and sends it to the Presidency of Bosnia and Herzegovina.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The authority competent to ratify is the Presidency of Bosnia and Herzegovina.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The Presidency of Bosnia and Herzegovina ratifies treaties with the prior consent of the Parliamentary Assembly of Bosnia and Herzegovina.

The consent of the Parliamentary Assembly of Bosnia and Herzegovina Is published in the Official Gazette of Bosnia and Herzegovina

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

There is no given deadline.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

There are no special procedures for accession to the treaty. The procedure is the same as in the case of procedure for concluding a treaty but it is not preceded by signature.

10. Which authority decides whether:

a) Reservations should be made?
b) Reservations should be withdrawn?
c) Objections should be presented to reservations made by other States?

In principal, the authority to decide about reservations is the authority competent to ratify the treaty, that is: Presidency or Parliamentary Assembly

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties become incorporated into domestic law. However, it may be necessary to amend the domestic laws, in order to comply with the provisions of the treaty. The ratified and published international treaties are directly applicable.

12. If so, does the Incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

The treaty is incorporated into domestic law by promulgation and publication in the Official Gazette of Bosnia and Herzegovina.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The internal laws and the executive acts must be in compliance with the ratified and published international treaties.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

When a treaty is signed by Bosnia and Herzegovina there is always the intention to ratify it afterwards.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, if a treaty itself so provides.

In addition to the above, in accordance with Article 2 of the Law on Procedure for Concluding and Implementing International Treaties, the rules of international customary law and international treaty law, and provisions of the Vienna Convention on the law of the treaties (1969) to which Bosnia and Herzegovina is a Party, shall apply to the issues not regulated by this Decision.

CANADA

1. Which authority, in your country, is vested with treaty-making power?

In Canada, treaty-making is an executive act. The Canadian Constitution contains no provisions regarding treaty-making apart from Section 132 of the Constitution Act, 1867 which has fallen into disuse because it has no relevance to present day conditions.

Treaty-making in Canada is part of the Royal Prerogative, the residue of authority left in the Crown, and in practice is exercised by the Governor General in Council, that is the Governor General of Canada acting on the advice of Privy Councillors who are Ministers of the government.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Minister for Foreign Affairs is authorised by statute to "conduct and manage international negotiations as they relate to Canada". Accordingly, the competence to authorise and conduct negotiations for a treaty rests primarily with the Department of Foreign Affairs and International Trade. Policy approval for entering into negotiations will normally be sought from the Cabinet or from the Minister for Foreign Affairs and other Ministers of government concerned with the subject matter of the treaty. It is not Canadian practice to issue formal credentials for the negotiation of a treaty.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (mutatis mutandis) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Canadian treaty procedure and practice enable the government of Canada to accept any of the methods of expressing consent to be bound by a treaty outlined in this question.

Before the government of Canada enters into any treaty obligation, including any method of expressing consent to be bound, two steps are necessary:

a. Policy approval must be obtained from the Cabinet (the government of the day) or from the Ministers of government most directly concerned with the subject matter of the treaty, including the Minister for Foreign Affairs; and

b. Executive authority must be obtained from the Governor General in Council, in the form of an Order-in-Council. The Order-in-Council will authorise signature of the treaty by a designated individual, on behalf of the government of Canada, and/or will authorise the Minister for Foreign Affairs to execute an instrument of ratification, acceptance, approval or accession on behalf of the government of Canada.

There is no legal requirement for Parliamentary approval to enable the government of Canada to enter into an international agreement. On occasion, however, international agreements may be brought directly to the attention of Parliament and the approval of the House of Commons and the Senate may be sought by joint resolution before Canada commits itself to treaties, which involve military or economic sanctions, political or military commitments of a far-reaching character, or the large expenditure of public funds. The decision on whether Parliamentary approval should be sought is made, in each instance, by the government of the day. In some instances, the government will table a treaty in Parliament to bring it to the attention of the House of Commons and the Senate, before or after the treaty is signed but without seeking formal approval by joint resolution. More

recently, the government adopted the practice of submitting important treaties to appropriate committees of Parliament for consultation purposes prior to the tabling of these treaties.

Many international agreements require legislation to make them effective in Canadian domestic law. The legislation may be either federal or provincial/territorial or a combination of both, in fields of shared jurisdiction. Canada will not normally become a party to an international agreement, which requires implementing legislation until the necessary legislation has been enacted. If the legislation falls within federal jurisdiction, the implementing legislation will often include a section stating that Parliament approves the agreement. This would be employed, for example, in statutes implementing double taxation agreements, under which the agreement in question is given the force of law in Canada.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Many treaties can be implemented in Canada under existing law, or through administrative action. In these instances, the treaty may enter into force immediately on signature, and there is no need for the treaty to be subject to ratification, acceptance or approval.

5. In what cases is signature subject to ratification required?

There is no requirement in Canadian practice for a particular treaty to be made subject to ratification. If the performance of treaty obligations necessitates a change in Canadian domestic law (federal or provincial/territorial laws, or a combination of both) and the consequent enactment of implementing legislation, Canadian practice is to sign subject either to ratification or to the exchange of notifications procedures (that is an exchange of diplomatic notes bringing the treaty into force). Implementing legislation is enacted before the treaty is brought into force.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Canada is in a position to accept or approve a treaty, usually an amendment or a Protocol to a treaty, if this is the means of consent provided for in the final clauses of the treaty. It is immaterial in Canadian practice whether acceptance or approval is preceded by signature. Acceptance by signature, as in the case of the 1979 MTN Agreements, is also possible.

Acceptance or approval is treated as having equivalent legal effect to ratification in Canadian practice.

7. In each of the situations mentioned under 3(a), 4, 5 and 6, please describe the steps, which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The steps, which must be followed in Canada before entering into treaty obligations, are explained in the answer to question 3. In the case of important treaties, the government of Canada may table the text of the treaty in Parliament to bring it to the attention of MPs and Senators or seek the formal approval of Parliament by joint resolution. In some instances, the text of an initialled treaty, by agreement with the other government involved, may be tabled in Parliament prior to signature. However, it is more common now to refer important treaties to the appropriate Parliamentary committees.

Although the government of Canada has the legal power to enter into treaties dealing with matters within provincial/territorial jurisdiction, it will not do so without prior consultation with the governments of the Provinces/Territories.

The practice of the Canadian government, in cases where the subject matter of an international agreement falls either wholly or partly within provincial/territorial jurisdiction, is to consult each of the provincial/territorial governments. The process of consultation is informal and is usually conducted by correspondence between the federal and

provincial/territorial governments and meetings of representatives of both levels of government.

A multilateral treaty dealing with matters within provincial/territorial jurisdiction would normally be signed by Canada only after consultation with the provinces/territories had indicated that they accepted the basic principles and objectives of the treaty. Assurances would be obtained from the provinces/territories that they are in a position, under provincial/territorial laws and regulations, to carry out the treaty obligations dealing with matters falling within provincial/territorial competence, before action is taken by the government of Canada to ratify or accede to such a treaty.

On occasion the inclusion in a multilateral treaty of the modern form of federal state clause enables Canada to become a party to the treaty while declaring that its application within Canada will be limited to certain provinces/territories. Such declarations may be amended from time to time to permit the treaty's application to be extended to other provinces/territories.

In the case of some bilateral treaties, the conclusion of federal-provincial/territorial agreements, or formal undertakings (that is adoption of appropriate provincial/territorial legislation) from certain provinces/territories, may be essential to enable the Canadian government to fulfil its obligations under the treaty.

There is no legal requirement for the government of Canada to consult with professional or other interested groups. However, in the case of bilateral agreements which have a significant impact on the interests of certain groups or associations, or multilateral treaties such as the Law of the Sea Convention, extensive consultations would normally be undertaken with representatives of the groups or associations affected by the content of the proposed treaty. There is wide public consultation with respect to trade agreements.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

In Canada, ratification, like any other form of treaty action, is an executive act and is done following approval by the policy branch of government and after executive authority has been obtained from the Governor General in Council. Instruments of ratification are executed by the Minister for Foreign Affairs on behalf of the government of Canada.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Prior authorisation is not required, as a matter of constitutional law and practice, before the Executive Branch of the government of Canada proceeds to take the formal step of authorising the Minister for Foreign Affairs to execute and issue an Instrument of Ratification on behalf of Canada.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a given deadline? If this deadline is passed without a decision, what is the consequence?

There is no legally established deadline.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

Any delay in ratification by Canada, once policy approval is given and executive authority has been obtained, would be attributable to policy considerations determined by the competent authorities.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

    a) reservations should be made?

    b) reservations should be withdrawn?

    c) objections should be presented to reservations made by other States?

In Canada the Minister for Foreign Affairs following consideration by Cabinet or after consultation with other interested Ministers, and on the basis of advice from the legal advisers of the Department of Foreign Affairs and International Trade and other government departments, decides (a) whether reservations should be made, (b) whether reservations should be withdrawn, and (c) whether objections should be presented to reservations made by other States.

In the case of multilateral conventions whose subject matter falls wholly or partly within provincial/territorial jurisdiction, the provincial/territorial governments would be consulted before a Canadian reservation is made or withdrawn.

11. Do treaties to which your country is a party become incorporated into your country's domestic law?

In some cases. In Canada, treaties are not self-executing and do not automatically become part of the law of the land by reason of their entry into force. Treaties require implementing legislation in order to make them effective in domestic law.

As pointed out in the answer to question 4 above, the Canadian government in many instances is in a position to carry out its international obligations on the basis of the existing law of Canada (including federal and provincial/territorial statutes and regulations as well as the general rules of common law and the Civil Code of the Province of Quebec), or through administrative measures.

If it is necessary to change domestic law in order to enable Canada to discharge its treaty obligations, this may be done in a number of ways:

a. by enacting the required legislation without express reference to the treaty, e.g. changes in the Canadian Customs Tariff may be made without express reference to particular bilateral or multilateral trade agreements;

b. by legislation which makes reference to the treaty but without expressly enacting its provisions. This may be done either with or without annexing the text of the treaty, e.g. the Canadian Immigration Act refers to the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocol without expressly enacting the provisions of these treaties or annexing their texts; or

c. by incorporating into law the treaty or the relevant provisions, e.g. Canadian statutes implementing double taxation conventions or agreements declare that the conventions or agreements, set forth in schedules, have the force of law in Canada.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

See answers to questions 3 and 11. It is Canadian practice to secure the enactment by Parliament of any necessary implementing legislation before the government expresses its consent to be bound by a treaty.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Parliament may, by legislation, approve a treaty and declare that it has the force of law in Canada. If a statute is enacted by the Parliament of Canada and/or by the legislatures of the

Provinces/territories to give effect to the provisions of a treaty, that law, or laws, will have the same status as any other law of the same type. As pointed out in the answer to question 11, it is possible, under the Canadian system, to enact the required implementing legislation with or without express reference to the particular treaty.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature, subject to ratification, of a treaty by Canada indicates an intention, on the part of the government, to give careful consideration to all aspects of the treaty with a view to proceeding in due course to ratification.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Provisional application is possible, for example, when such a provision is included in the legislation (e.g. the Department of Transport Act). If, however, changes in Canadian laws or regulations are necessary in order to enable the government of Canada to commit itself to provisional application of a treaty, appropriate legislative or regulatory action must be taken.

ISRAEL

1. Which authority, in your country is vested with the treaty-making power?

Treaty-making power is vested in the government, which has empowered the Minister for Foreign Affairs with the authority to negotiate and sign treaties.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The competence to authorise negotiations on behalf of the Israeli governments rests with the Ministry of Foreign Affairs, which normally consults with the Ministry in charge of the particular field to which the treaty applies, and the Ministry of Justice. When another Ministry wishes to initiate negotiations with another State in the field of its responsibility, it has to receive first the approval from the Ministry of Foreign Affairs and from the Ministry of Justice. The Ministry of Foreign Affairs would in any event maintain a certain degree of control and co-ordination, in regard to negotiation of treaties.

There is no one special procedure for authorising negotiations. However, a Ministry that wishes to initiate negotiations must send the Ministry of Foreign Affairs and the Ministry of Justice a position paper, in accordance with the directives of the Attorney General, which govern all the steps relating to the Conclusion of a treaty.

3. Does the legal system of our country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

Yes.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

In Israeli treaty-making practice, signature not subject to ratification is very rare and can only take place provided the government has confirmed the text of the treaty before signing it. In practice, if such a procedure is followed, it is usually applied to bilateral treaties.

5. In what cases is signature subject to ratification required?

Any treaty, besides the exceptions mentioned in the answer to question No 4, is signed subject to ratification. Following a government constitutional decision on 1983, a treaty can normally be ratified only after it has been laid before the Knesset (Parliament) for a period of two weeks. (Actually, there is no need for parliamentary approval).

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

Israel doesn't have a special procedure for acceptance or approval and the procedure is practically the same as the ratification procedure. They are preceded by signature.

7. In each of the situations mentioned under 3a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

The first step of authorising negotiations is specified in answer 2 above. Treaties are negotiated by a delegation usually headed by representatives of the concerned Ministry and

a representative of the Ministry of Foreign Affairs, in most cases the Treaty Division. Before and during negotiations the delegation consults all interested groups.

Beside the professional consultations with the concerned Ministry and the policy-related approval from the Ministry of Foreign Affairs, it is necessary to consult the Ministry of Justice as to the possible legal internal implications.

After initialling the text of a treaty and signing it, normally a treaty must be ratified in order to enter into force, as mentioned above. A treaty cannot be ratified without either a legal endorsement from the Ministry of Justice that the treaty is in accordance with Israeli law or, where necessary, that appropriate legislation has been made, and the approval of the Treaty Division of the Ministry of Foreign Affairs as to the international law implications and the policy-related issues.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

See answers to questions No. 5 and No. 7 above.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Beside the requirements in 5 and 7, there is no need for authorisation to ratify. As mentioned above, a treaty has to be laid before the Knesset for a period of two weeks, but it does not have the power to approve the ratification.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

There is no legal requirement from the government to ratify within a given deadline. The government may delay the ratification because of policy considerations or technical reasons. It is not obliged to ratify a treaty, but since most relevant aspects are usually checked out before bringing a treaty for ratification, treaties are usually ratified without delay.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a certain deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

a) reservations should be made?

The government, upon the advice of the Ministry primarily responsible for the implementation of the treaty and upon the advice and co-ordination with the Treaty Division of the Ministry of Foreign Affairs and other relevant Ministries.

b) Reservations should be withdrawn?

c) Objections should be presented to reservations made by other States?

The Ministry of Foreign Affairs, in consultation with the Ministry of Justice and the Ministries, who are responsible for implementation of the treaty. The Ministry of Foreign Affairs co-ordinates various aspects of reservations to treaties.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

No. If any provision of a treaty requires implementation in the domestic law of Israel, appropriate legislative action is taken. The legislation is usually done before ratifying the treaty (that is before becoming a party) so that when ratified, the treaty becomes operative, unless otherwise provided in the treaty.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

As mentioned above, a separate legislative act is necessary in the appropriate case.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

The legal status of a treaty incorporated by law into the Israeli legal system is the same as any other law of the same type.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature subject to ratification normally indicates an intention on the part of the government to ratify the treaty at an appropriate time.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Yes, if so approved by a government decision and appropriate legislative action has been taken, when such is necessary.

JAPAN

1. Which authority, in your country, is vested with the treaty-making power?

The Cabinet is vested with the treaty-making power under the Constitution. The Ministry of Foreign Affairs is vested with the treaty-making power within the Cabinet. We mean by "treaties" international agreements, irrespective of their denomination, which establish legal relations governed by international law between Japan and other countries or international organisations.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Ministry of Foreign Affairs can begin and conduct negotiations on conclusion of treaties without authorisation of any other authorities, and so there is no specific procedure for authorising negotiations.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

We do not usually use such concepts as "signature not subject to ratification", "signature subject to ratification, acceptance or approval". The following is to explain the distinction established in our practice, according to which treaties are categorised either as a "Diet-approved treaty" or as an "administrative agreement". While administrative agreements enter into force after signature, the conclusion of a Diet-approved treaty requires approval by the Diet after the signature.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

The following is to explain in what cases and under what conditions conclusion of administrative agreement is possible. There has been no law or regulation that provides distinction between the two categories of treaties, but in practice, the following three categories for Diet-approved treaties are mentioned.

   i. treaties, which would require new legislation, revision or maintenance of domestic laws;

   ii. treaties, which would impose financial obligations on the Government of Japan that are not approved by the existing budget or laws;

   iii. treaties, which are so politically important that a ratification clause is included.

92. In what cases is signature subject to ratification required?

Ratification is, in general, considered to be the most formal form in which States express their consent to be bound by a treaty. So signature subject to ratification is required for treaties important enough to take such a form.

93. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

As long as the treaty to be concluded itself allows acceptance or approval as a means of expressing the consent to be bound by the treaty, there are no additional domestic conditions. Whether they are preceded by signature also depends on the provisions of the treaty.

7. In each of the situations mentioned under 3a), 4, 5 and 6, please describe the steps which must be taken leading to the decision to bind the State. In particular, must the authority making the decision consult with other authorities (if so, which ones?) or professional or other interested groups?

Although the meaning of the question is not necessarily clear, we are going to explain the respective steps to conclude administrative agreement and Diet-approved treaty.

a. Administrative agreements

During negotiations, the Ministry of Foreign Affairs consults with the competent ministries and agencies concerned. After the text of a treaty is finalised, the text is submitted to the Cabinet Legislation Bureau, which examines the compatibility of the treaty with the existing domestic laws and regulations and therefore to assure the implementation of the treaty.

After such examination, the Minister for Foreign Affairs, as it deems appropriate, ask the Cabinet to approve the signature of the treaty. On its approval, the treaty is to be signed by the Minister for Foreign Affairs, ambassadors or a person given full powers or authorised by the Minister.

b. Diet-approved treaties

Steps leading to the signature of Diet-approved treaties are almost same as administrative agreements. But it should be noted that there is a difference between bilateral treaties and multilateral treaties as to when the text of a treaty is submitted to the Cabinet Legislation Bureau for its review. While the text of a bilateral treaty is submitted and the review is completed before the signature, the text of a multilateral treaty is submitted after the signature and the review is completed before the Diet-approval

After the signature, the Ministry of Foreign Affairs seeks a Cabinet decision to request the Diet-approval of conclusion of the treaty. Once the Ministry obtained the approval by the Diet, it requests a Cabinet decision to bring into force the treaty through the procedures prescribed in the treaty. Having obtained such a decision, the Ministry of Foreign Affairs takes necessary procedures. These procedures include, for bilateral treaties, exchange of instruments of ratification attested by the Emperor or exchange of diplomatic notes, and, for multilateral treaties, deposits of acceptance attested by the Minister for Foreign Affairs and of approval(Japan normally does not use this measure).

6. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The Cabinet.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

The Cabinet shall obtain prior or, depending on circumstances, subsequent approval of the Diet.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No specific deadline exists for requesting the Diet-approval of a treaty already signed.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No specific deadline exists for requesting a Cabinet decision to bring into force a treaty already approved by the Diet.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether :

a) reservation should be made?

The Cabinet.(Within the Cabinet, the Ministry of Foreign Affairs.) The Ministry of Foreign Affairs informs the Diet about reservations made.

b) reservations should be withdrawn?

The Cabinet.(Within the Cabinet, the Ministry of Foreign Affairs.) Withdrawal of reservations is reported to the Diet in practice.

c) objections should be presented to reservations made by other States?

The Cabinet. (Within the Cabinet, the Ministry of Foreign Affairs.)

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Treaties are incorporated into Japanese domestic law under the Constitution.

12. If so, does the incorporation happen by reason of (and at the time of)the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

As for the timing of the incorporation, treaties which are approved by the Diet are incorporated into the domestic law of Japan at the time of promulgation. As for administrative agreements, they are incorporated into the domestic law of Japan when they become effective with the other parties to the agreement.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Treaties which are approved by the Diet are legally superior to the domestic law. In general, the Constitution is considered to be superior to treaties.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Signature indicates a firm intention of the Cabinet to obtain approval of the Diet for the entry into force of the treaty. But the Cabinet is not obliged to request a Diet approval of a treaty already signed. In general, however, it is hard to imagine that the Cabinet should approve the signature of a treaty which it does not have intention to bring into force.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

The provisional application of treaties before their entry into force is possible only when such application can be done within the competence of the Cabinet and such application is reported to the Diet.

MEXICO

1. Which authority, in your country, is vested with the treaty-making power?

The President of the Republic who may delegate it by granting full powers.

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

The Minister for Foreign Relations through a written communication.

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

Yes.

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

Signature is not subject to ratification, acceptance or approval in case of executive agreements (treaties in simplified form).

5. In what cases is signature subject to ratification required?

Signature is subject to ratification in case of formal treaties.

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

The acceptance is possible preceded by the signature.

The term approval is reserved by the Mexican legislation to the sanction of treaties given by the Senate of the Republic.

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

In case of executive agreements the institution to celebrate it (a Secretariat of State, a province, a county or a decentralised organism) must obtain, before the signature, the approval of the Ministry of Foreign Relations.

In case of due form treaties, the Ministry of Foreign Relations must consult the substantive authorities (depending of the matter of the treaty); if the answer is affirmative, the treaty is sent for its sanction to the Senate of the Republic and once that it is approved, is subsequently ratified. The substantive authorities consult professional or other interested groups before giving its opinion about a treaty.

In case of adherence or accession there is not a previous signature and after consultations to the respective authorities, the treaty is sent for its approval to the Senate. After the ratification, acceptance or adherence the treaty must be published in the Official Gazette in order to become domestic law in Mexico.

Executive agreements are not published in the Official Gazette.

8. When ratification is necessary, please specify:

a) Which authority is competent to ratify?

The Minister for Foreign Relations.

b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

Yes, from the President of the Republic by signing the instrument of ratification, which is also signed by the Minister for Foreign Relations.

c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

No, there is not a deadline to ask the authorisation for the instrument of ratification.

d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

No, there is not a deadline but the Minister for Foreign Relations may refrain indefinitely from ratifying a treaty only with an express authorisation from the President.

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

No.

10. Which authority decides whether:

a) reservations should be made?

The Minister for Foreign Relations. In case that the matter of the treaty requires the opinion of other substantive authority the Minister shall make the necessary consultations.

b) reservations should be withdrawn?

The Minister for Foreign Relations previous consultation with other substantive authorities.

c) Objections should be presented to reservations made by other States?

The Minister for Foreign Relations previous consultation with other substantive authorities.

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

Yes.

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

In case of executive agreements the incorporation to domestic law happens by reason and at the time of its signature.

13. What is the legal status of a treaty incorporated into the domestic law of your country?

Executive agreements are only administrative law; treaties are constitution law.

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

Yes.

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

No

Appendix 1

QUESTIONNAIRE ON EXPRESSION OF CONSENT BY STATES
TO BE BOUND BY A TREATY

1. Which authority, in your country, is vested with the treaty-making power?

2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given?

3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval?

   a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.

   b) If the answer is yes, please reply to questions 4 and following.

4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible?

5. In what cases is signature subject to ratification required?

6. In what cases and under what conditions is acceptance or approval possible? Are they preceded by signature?

7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones?) or professional or other interested groups?

8. When ratification is necessary, please specify :

   a) Which authority is competent to ratify?

   b) Must it have prior authorisation to ratify? If so, who gives such authorisation and what form does it take?

   c) In cases when a prior authorisation is required, must it be applied for within a certain deadline? Must the decision of the authorising authority be taken within a certain deadline? If this deadline is passed without a decision, what is the consequence?

   d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline? Could it refrain from ratifying indefinitely?

9. In case of accession to a treaty, are there any other procedures not described above which are followed?

10. Which authority decides whether :

    a) reservations should be made?

    b) reservations should be withdrawn?

    c) objections should be presented to reservations made by other States?

11. Do treaties to which your country is a Party become incorporated into your country's domestic law?

12. If so, does the incorporation happen by reason of (and at the time of) the signature not subjects to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary?

13. What is the legal status of a treaty incorporated into the domestic law of your country?

14. Does signature of a treaty by your country indicate a firm intention to ratify it?

15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions?

Appendix 2

VIENNA CONVENTION ON THE LAW OF TREATIES
(signed at Vienna 23 May 1969)

Entry into force: 27 January 1980

The States Parties to the present Convention

Considering the fundamental role of treaties in the history of international relations,

Recognising the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their Constitutional and social systems,

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognised,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I

INTRODUCTION

Article 1

Scope of the present Convention

The present Convention applies to treaties between States.

Article 2

Use of terms

1. For the purposes of the present Convention:

(a) 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) 'ratification', 'acceptance', 'approval' and 'accession' mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) 'full powers' means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) 'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) 'negotiating State' means a State, which took part in the drawing up and adoption of the text of the treaty;

(f) 'contracting State' means a State, which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) 'party' means a State, which has consented to be bound by the treaty and for which the treaty is in force;

(h) 'third State' means a State not a party to the treaty;

(i) 'international organisation' means an intergovernmental organisation.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings, which may be given to them in the internal law of any State.

Article 3

International agreements not within the scope of the present Convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4

Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5

Treaties constituting international organisations and treaties adopted within an international organisation

The present Convention applies to any treaty, which is the constituent instrument of an international organisation and to any treaty adopted within an international organisation without prejudice to any relevant rules of the organisation.
94.

PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

Article 6

Capacity of States to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) representatives accredited by States to an international conference or to an international organisation or one of its organs, for the purpose of adopting the text of a treaty in that conference, organisation or organ.

Article 8

Subsequent confirmation of an act performed without authorisation

An act relating to the conclusion of a treaty performed by a person who cannot be considered under Article 7 as authorised to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9

Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10

Authentication of the text

The text of a treaty is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11

Means of expressing consent to be bound by a treaty

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 or accession, or by any other means if so agreed.

Article 12

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13

Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect

Article 14

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. 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.

Article 15

Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State by means of accession;

(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16.

Exchange or deposit of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

(c) their notification to the contracting States or to the depositary, if 50 agreed.

Article 17

Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to Articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty, which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2. RESERVATIONS

Article 19

Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20

Acceptance of and objection to reservations

1. A reservation expressly authorised by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organisation and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organisation.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21

Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with Articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22

Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

Article 24

Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25

Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

(b) the negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26

Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27

Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28

Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29

Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between States parties to both treaties the same rule applies as in paragraph 3;

(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to Article 41, or to any question of the termination or suspension of the operation of a treaty under Article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty, the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument, which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result, which is manifestly absurd or unreasonable.

Article 33

Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of Articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34

General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35

Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36

Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with Article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with Article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38

Rules in a treaty becoming binding on third States through international custom

Nothing in Articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognised as such.

PART IV

AMENDMENT AND MODIFICATION OF TREATIES

Article 39

General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty, which does not become a party to the amending agreement; Article 30, paragraph 4(b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41

Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42

Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43

Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44

Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under Article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognised in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in Article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under Articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under Articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45

Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under Articles 46 to 50 or Articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2. INVALIDITY OF TREATIES

Article 46

Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47

Specific restrictions on authority to express the consent of a State

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; Article 79 then applies.

Article 49

Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50

Corruption of a representative of a State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51

Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty, which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52

Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53

Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54

Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 55

Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56

Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57

Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 58

Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) the possibility of such a suspension is provided for by the treaty; or

(b) the suspension in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59

Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60

Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61

Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63

Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64

Emergence of a new peremptory norm of general international law (jus cogens)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65

Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefore.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in Article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to Article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66

Procedures for judicial settlement, arbitration and conciliation

If, under paragraph 3 of Article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of Articles 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other Articles in Part V of the present Convention may set in motion the procedure specified in the Annexe to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67

Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under Article 65 paragraph 1 must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of Article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of state, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68

Revocation of notifications and instruments provided for in Articles 65 and 67

A notification or instrument provided for in Articles 65 or 67 may be revoked at any time before it takes effect.

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 69

Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under Articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70

Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71

Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under Article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under Article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI

MISCELLANEOUS PROVISIONS

Article 73

Cases of State succession, State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74

Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75

Case of an aggressor State

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII

DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 76

Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organisation or the chief administrative officer of the organisation.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77

Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organisation concerned.

Article 78

Notifications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(a) If there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with Article 77, paragraph 1 (e).

Article 79

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorised representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate Time limit within which objection to the proposed correction may be raised. If, on the expiry of the time limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a proc☺s-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80

Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorisation for it to perform the acts specified in the preceding paragraph.

PART VIII

FINAL PROVISIONS

Article 81

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialised agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83

Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in Article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

APPENDIX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of

a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. Then a request has been made to the Secretary-General under Article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing.

Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

Appendix 3

VIENNA CONVENTION ON THE LAW OF THE TREATIES
STATUS OF RATIFICATION (01/04/2001)

State	Signature	Ratification, Accession (a), Succession (d)
Afghanistan	23 May 1969	
Algeria		8 Nov 1988 a
Argentina	23 May 1969	5 Dec 1972
Australia		**13 Jun 1974 a**
Austria		**30 Apr 1979 a**
Barbados	23 May 1969	24 Jun 1971
Belarus		1 May 1986 a
Belgium		**1 Sep 1992 a**
Bolivia	23 May 1969	
Bosnia and Herzegovina		**1 Sep 1993 d**
Brazil	23 May 1969	
Bulgaria		**21 Apr 1987 a**
Cambodia	23 May 1969	
Cameroon		23 Oct 1991 a
Canada		**14 Oct 1970 a**
Central African Republic		10 Dec 1971 a
Chile	23 May 1969	9 Apr 1981
China		3 Sep 1997 a
Colombia	23 May 1969	10 Apr 1985
Congo	23 May 1969	12 Apr 1982
Costa Rica	23 May 1969	22 Nov 1996
Côte d'Ivoire	23 Jul 1969	
Croatia		**12 Oct 1992 d**
Cuba		9 Sep 1998 a
Cyprus		**28 Dec 1976 a**
Czech Republic		**22 Feb 1993 d**
Democratic Republic of the Congo		25 Jul 1977 a
Denmark	**18 Apr 1970**	**1 Jun 1976**
Ecuador	23 May 1969	
Egypt		11 Feb 1982 a
El Salvador	16 Feb 1970	
Estonia		**21 Oct 1991 a**
Ethiopia	30 Apr 1970	
Finland	**23 May 1969**	**19 Aug 1977**
Georgia		**8 Jun 1995 a**
Germany	**30 Apr 1970**	**21 Jul 1987**
Ghana	23 May 1969	
Greece		**30 Oct 1974 a**
Guatemala	23 May 1969	21 Jul 1997
Guyana	23 May 1969	
Haiti		25 Aug 1980 a
Holy See	30 Sep 1969	25 Feb 1977
Honduras	23 May 1969	20 Sep 1979
Hungary		**19 Jun 1987 a**
Iran (Islamic Republic of)	23 May 1969	
Italy	**22 Apr 1970**	**25 Jul 1974**
Jamaica	23 May 1969	28 Jul 1970
Japan		**2 Jul 1981 a**
Kazakhstan		5 Jan 1994 a

Kenya	23 May 1969	
Kuwait		11 Nov 1975 a
Kyrgyzstan		11 May 1999 a
Lao People's Democratic Republic		31 Mar 1998 a
Latvia		**4 May 1993 a**
Lesotho		3 Mar 1972 a
Liberia	23 May 1969	29 Aug 1985
Liechtenstein		**8 Feb 1990 a**
Lithuania		**15 Jan 1992 a**
Luxembourg	**4 Sep 1969**	
Madagascar	23 May 1969	
Malawi		23 Aug 1983 a
Malaysia		27 Jul 1994 a
Mali		31 Aug 1998 a
Mauritius		18 Jan 1973 a
Mexico	**23 May 1969**	**25 Sep 1974**
Mongolia		16 May 1988 a
Morocco	23 May 1969	26 Sep 1972
Myanmar		16 Sep 1998 a
Nauru		5 May 1978 a
Nepal	23 May 1969	
Netherlands		**9 Apr 1985 a**
New Zealand	29 Apr 1970	4 Aug 1971
Niger		27 Oct 1971 a
Nigeria	23 May 1969	31 Jul 1969
Oman		18 Oct 1990 a
Pakistan	29 Apr 1970	
Panama		28 Jul 1980 a
Paraguay		3 Feb 1972 a
Peru	23 May 1969	14 Sep 2000
Philippines	23 May 1969	15 Nov 1972
Poland		**2 Jul 1990 a**
Republic of Korea	27 Nov 1969	27 Apr 1977
Republic of Moldova		**26 Jan 1993 a**
Russian Federation		**29 Apr 1986 a**
Rwanda		3 Jan 1980 a
Saint Vincent and the Grenadines		27 Apr 1999 a
Senegal		11 Apr 1986 a
Slovakia		**28 May 1993 d**
Slovenia		**6 Jul 1992 d**
Solomon Islands		9 Aug 1989 a
Spain		**16 May 1972 a**
Sudan	23 May 1969	18 Apr 1990
Suriname		31 Jan 1991 a
Sweden	**23 Apr 1970**	**4 Feb 1975**
Switzerland		**7 May 1990 a**
Syrian Arab Republic		2 Oct 1970 a
Tajikistan		6 May 1996 a
“the former Yugoslav Republic of Macedonia”		**8 Jul 1999 d**
Togo		28 Dec 1979 a
Trinidad and Tobago	23 May 1969	
Tunisia		23 Jun 1971 a
Turkmenistan		4 Jan 1996 a
Ukraine		**14 May 1986 a**

United Kingdom of Great Britain and Northern Ireland	**20 Apr 1970**	**25 Jun 1971**
United Republic of Tanzania		12 Apr 1976 a
United States of America	**24 Apr 1970**	
Uruguay	23 May 1969	5 Mar 1982
Uzbekistan		12 Jul 1995 a
Yugoslavia	23 May 1969	27 Aug 1970
Zambia	23 May 1969	

States which provided a reply included in the 1986 report on included in the present book appear in bold.

Out of the states considered in the analytical report, Albania, Andorra, Azerbaijan, France, Iceland, Ireland, Israel, Luxembourg, Malta, Norway, Portugal, Romania, San Marino, Turkey and the United States are not parties to the Convention.