

Sealing the Pact:

Treaty completion, Custody & Global Recognition

For
MOLJPA, Nepal

by
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Plan of presentation

Given outline	Proposed outline
	Treaty: a quick recap of definition and its makers
- Formalities and steps in finalizing a treaty	Formalities and steps in finalizing a treaty - domestic front - international front
- Minutes	Minutes - kept by Sectt; mostly the decisions and/or resolutions
	Travaux preparatoires - detailed records of rationales and agreements, may make part of the treaty for the purpose of interpretation, primarily in <u>two situations</u> – when the result comes out in unintended form, or when views among parties differ. These are non-binding, but with some moral force.
- Role & functions of treaty depository	Treaty depository - designation, role and functions is designated by the instrument/ treaty itself. Today, it's mostly the SG of UN; sometimes also the host authority (mark of an honour for hosting); and sometimes also the concerned agency of the UN. Latest trends in international treaty making
- Registration with international bodies	Registration with international bodies

What is a treaty?

- Black's Law Dictionary- “.. an agreement formally signed, ratified, or adhered to between two countries or sovereigns; an international agreement concluded between two or more states in written form governed by international law.”
- Nepal Treaty Act, 1990 (2047VS), Art 2(a)- “.. an agreement concluded in writing between two or more states, or between any state and inter-governmental organization and this term also includes any document of this nature, irrespective of how it is designated.”
- Vienna Convention on the Law of Treaties, 1969- “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”. It also affirms that every sovereign state “possesses the capacity to conclude treaties.”
- UN Treaty Collection's list of key terms to denote a treaty- Treaty, Agreement, Charter, Convention, Declaration, Exchange of Notes, Memorandum of Understanding, Protocol, Modus Vivendi ... [<https://treaties.un.org/Pages/>]

Who makes a treaty?

The treaty making power:

- is an attribute of sovereign nation states, per their national interest;
- is best exercised in consultation with domestic stakeholders in devising national positions and strategies;
- warrants collective consultation with international stakeholders for/during negotiations;
- comes into play based on the principles of greater good and good faith;
- also implies power to withdraw from a treaty should the need arise.

International treaty-making process:

From the international perspective

- Proposal - of one or more states and support of majority of states in the related international forum seeking to trigger the process (e.g., T&T proposed establishing an ICC, UNGA, 1994).
- Negotiations - Policy statements at plenary and committee formals; informal consultations; informal-informal consultations; formation of dedicated WG/PrepCom, request for placement in the UNGA Committee on Conferences' Calendar for PrepCom meetings, placement with necessary budget.
- Preparatory Committee meetings- call for delegations by the convenor; Credentials Committee screening (ICC: 1996-98, NY); series of meetings
- Diplomatic Conference- finalisation, opening for signature, Final Act, and deposition (increasingly without reservations), and implementation including through a Preparatory Commission if needed (1998, Rome). Final clauses (the last set of articles in a treaty text that govern how the treaty will function legally and procedurally after it's adopted).
- Ratification – process of ratification; deposition of the instrument of ratification
- Coming into Force - implementation and reporting, further steps where needed (amendments, protocols)

International treaty-making process:

From the national/ domestic perspective

- Government's initial official assessment of the matter
- Consultation with domestic stakeholders
- Government's formal decision to propose/ participate in the preparatory process
- Delegation(s) and mandate(s)- international discussions and inter-agency coordination for national views and positions
- Participation & reporting back to government- several rounds
- Leading to diplomatic conference of full-power delegations (may be for signature as well), even at political levels
- Finalization and signing of the treaty/ call for signatures; signing of Final Act (proceedings)
- Cabinet decision for signature and/or ratification following due process, including parliamentary endorsement for ratification/ accession/ acceptance
- Nepal Treaty Act 1990 (2047VS),
 - Art 4 provides for the procedure relating to ratification and accession of treaties, and
 - Art 5 provides for ratification, accession, acceptance of some specific treaties.

Final formalities and steps to be a party to the treaty

- Domestic formalities:
 - Government's decision
 - Parliamentary decision to accede/ to ratify/ to accept
 - Preparation of proper instrument
 - Channel of transmitting/submitting the instrument- diplomatic mission/ delegation/ 'Principal'
- International formalities-
 - Deposition of the instrument of accession/ratification with the designated depository (Timing); Treaty Event(s)

Formalities and steps in finalizing a treaty

- Finalizing a treaty involves a series of formalities and steps contributing to the negotiation and adoption process.
- While specific procedures may vary, a general outline of the key formalities and steps comprises the following stages:
 1. Negotiation stage
 2. Drafting stage
 3. Concluding stage
 4. Adoption stage
 5. Post-adoption stage
 6. Entry into force
 7. Implementation and compliance, reporting
- Let's have a closer look at each stage

Formalities & steps in finalizing a treaty contd.

1. Negotiation stage: with agreed Rules of Procedure

1. Preparatory work: conduct research, establish negotiating positions, engage in preliminary discussions, build coalitions, mechanisms for real-time fact-checking;
2. Preparatory committee: plenary, informal consultations, informal-informal consultations, *informal-informal-...*

2. Drafting stage: led by rapporteur or rapporteur-general (elected/unanimous)

1. Drafting the treaty text - by legal experts & diplomats, checking for coherence, consistency, ambiguities & constructive ambiguities; section by section, article by article, starting with L.1 documents (often competing texts)
2. Consultations - sharing the draft texts with relevant stakeholders (participating states and experts included) and gathering feedback

Formalities & steps in finalizing a treaty contd.

3. Concluding stage: Diplomatic conference,

- Conduct of the conference (hosted by a State or principal organisation) with pre-agreed Rules of Procedure and Credentials Committee
- Conduct final negotiation sessions exclusively of participating states representatives to finalise the treaty,
- Allow for final discussions, amendments and consensus building-
- Informal adoption – article by article, chapter by chapter
- Ad ref adoption- of the document as a whole

Formalities & steps in finalizing a treaty contd.

4. Adoption stage- event

- Formal adoption: Finalize the text and formally adopt it as a treaty, through consensus, vote or other agreed-upon procedures (adopt article by article/ page by page/ section by section/ finally as a whole)
- Signature –
 - States may choose to sign the treaty as an initial indication of their intention to be bound by it.
 - States may be invited to sign the Final Act of the Conference even if not the treaty itself.

Formalities & steps in finalizing a treaty contd.

5. Post-adoption formalities

- **Signature of the treaty**- if not signed at the diplomatic conference, or signed only the Final Act
- **Ratification, ...**- as per national requirements e.g., parliamentary approval or ratification confirming formal acceptance of the treaty's terms
- **Deposition of instrument**- of acceptance/approval/ratification/accession with designated depository
- **Notification** to other participating states of completion of ratification process (and reservations if at all)

Formalities & steps in finalizing a treaty contd.

6. Entry into force (per final clauses)

- Conditions for entry into force such as the number of ratifications
- Notification of entry into force- to the participating states and the public when the treaty comes into effect.

7. Implementation and compliance-

- Domestic legislation to implement the treaty with full compliance
- Monitoring of compliance – with mechanisms to resolve disputes and ensure reporting obligations

Minutes and Travaux preparatoires

	Minutes	Travaux preparatoires
Definition	<p>Official records of the proceedings of negotiation sessions, meetings or conference related to the development of an international treaty.</p> <p>Offer detailed <u>formal accounts</u> of discussions & decisions</p>	<p>Preparatory work, documentation and materials produced during the drafting and negotiation stages leading to the finalization of an international treaty.</p> <p>Provide <u>historical context</u> to the evolution of treaty</p>

Minutes & Travaux préparatoires contd.

	Minutes	Travaux préparatoires
Content	<p>Record of</p> <ul style="list-style-type: none">- key points discussed,- decisions made,- proposals presented, and- other relevant information used and/or generated during the negotiation process <p>They provide a <u>structured and substantive overview</u> of the proceedings.</p>	<p>Set of documents including</p> <ul style="list-style-type: none">- early drafts of the proposed treaty provisions (limited distribution, L.1..docs; provisional, P.1..docs)- reports, expert opinions,- committee discussions and reports, and- Chair's proposals, consensus drafts & other records [Rev.1/2/..] generated during the preparatory phase <p>They provide <u>historical documentary evidence</u> of the evolution of the treaty</p>

Minutes & Travaux préparatoires contd.

	Minutes	Travaux préparatoires
Purpose	To serve as an <u>official record</u> , providing a chronological account of the discussions, agreements and decisions made by participating states or parties involved in the treaty-making process	To provide <u>insights</u> into the negotiating parties' intentions and drafting process of an international treaty including the evolution of the treaty language, and the context in which the specific provisions were formulated

Minutes & Travaux preparatoires contd.

	Minutes	Travaux preparatoires
Significance	<p>Crucial for transparency, integrity, interpretation, accountability and effective implementation of international treaties</p> <p><u>Legal records</u>- of negotiation process, capturing intentions, agreements and decisions made by participating states</p> <p><u>Transparency and accountability</u>- help promote accountability among participating states by facilitating public understanding of the treaty's development.</p>	<p>Crucial for transparency, integrity, interpretation, accountability and effective implementation of international treaties</p> <p>These are <u>non-binding</u>, but with some moral force.</p> <p>They help in understading the <u>background and reasoning</u> behind certain provisions.</p>

Minutes & Travaux preparatoires contd.

	Minutes	Travaux preparatoires
Significance contd.	<p><u>Reference for interpretation</u>- for context & clarity of ambiguous treaty language, and insights into negotiators' intentions</p> <p><u>Dispute resolution</u>- help clarify negotiating parties' understanding and resolve disagreements</p>	<p>May make part of the treaty for their value in interpreting the text of the treaty in question, primarily in <u>two situations</u></p> <ul style="list-style-type: none">- when the result comes out in unintended form, or- when views among parties differ, <u>especially when the language is (constructively) ambiguous or unclear.</u>

Minutes & Travaux préparatoires contd.

	Minutes	Travaux préparatoires
Who prepares and how?	<p><u>Prepared by</u> a Recorder(s): designated individual or team, often from a secretariat or the host organization. A Rapporteur or Rapporteur-General may be formally nominated/appointed for the purpose from among the participating delegates.</p> <p><u>Real-time Documentation</u>: of real-time notes during negotiation sessions, capturing key points, proposals and responses. These can be archived or deposited with designated depository.</p> <p><u>Drafting Minutes</u>: After each session, the recorder drafts minutes summarizing discussions, decisions, and any agreements reached. These are circulated to relevant parties for review.</p>	<p><u>Prepared by</u> designated Secretariat or host agency</p> <p><u>Documentation</u>: Documents generated during the drafting process (like initial proposals, reports from experts, minutes of meetings leading to the final treaty text) are compiled and preserved.</p> <p><u>Archiving</u>: Travaux préparatoires are often archived and made accessible to relevant stakeholders. They may also be deposited with the designated depository or maintained by organisation overseeing the treaty.</p> <p><u>Public access</u>: Tp's may be made available to the public or consulted by parties involved in the treaty implementation.</p>

Treaty Depository: designation and categories

Designation of Depository:

International treaties are typically deposited with a designated Depository or Depositories, often specified in the treaty itself.

Common Depository categories

Organisations under whose auspices the treaties are negotiated

- The UNSG is the depository of the the CBD, UNCLOS, NPT, etc.

Organisations which are related to implementing the treaties

- CBD: Executive Secretary of the Convention on Biological Diversity Secretariat;
- UNCLOS: International Seabed Authority;
- NPT: DG of IAEA.

Government of one of the involved parties

- The North Atlantic Treaty, which is the basis of NATO, is deposited with the US Government as one of the NATO member countries.

Treaty Depository(ies):

General duties & responsibilities

1. Safekeeping: of original treaty text, amendments, and related documents (including minutes and travaux préparatoires)
2. Registration: of treaty for public access & transparency
3. Dissemination: of copies of the treaty to the parties & public
4. Notification: to parties about actions like accessions, ratifications, reservations, coming into force, withdrawals, etc.

Case: International Criminal Court

- **Proposal-** ICC's roots go back to late 19th & early 20th C;
 - momentum increased during the mid-20th C;
 - modern push came with Polish lawyer Raphael Lemkin (1900-1959)'s coining of the term 'genocide' and advocacy for international accountability for such crimes against humanity.
 - UNSC Experiences (Rwanda, Kosovo) and other developments requiring such a court intensified.
 - Formally triggered by the proposal made by T&T at the UNGA in 1996.
- **GA Preparatory Committee** meetings in NY: 1996-98 (MOLJ, MOFA participated)
- **Diplomatic Conference:** Rome, June-July 1998 (Nepal in Credentials Committee)
- Nepal's delegation: MOLJ Minister, MOFA JS (UNIOIL), MOLJ Under-Secretary
- **Final Act and Nepal:** opinion between delegates differed. Per instant mandate of Secy MOLJ and Secy MOFA, JS MOFA signed the Final Act particularly since the signatories would automatically be part of the Preparatory Commission for the establishment of the ICC as per the Rome Statute.
- Committee to explore possible formal association: chaired by MOLJ Secretary

Decision of a nation state to join a treaty

My recommendation for a 3-step procedure

Step 1: Use the lens of national interest- long-term strategic vision/ meta-policy/ NS Policy

- Examine treaties, prioritize, prepare legal and other ground work,
- Start implementing unilaterally for seamless transition to party obligations later
- Enlist do's & don't's (e.g., State itself should pay; no defaults; obligatory payment before voluntary; accept no obligations such as in case of 5050 Lab)

Step 2: conduct legal-technical feasibility- examine the State's

- Capacity to carry out Party obligations (scale of assessment, reporting, sharing info etc)
- Capacity to make use of treaty provisions available for its own capacity building.

Step 3: conduct political-diplomatic feasibility- examine if

- It is politically (at home) & diplomatically (geo-strategic grounds) right to join;
- It is better to join now or later, alone or in group, casually or in treaty events, etc.

References:

United Nations (2003): Final Clauses of Multilateral Treaties Handbook, United Nations Publications (published in response to the UNGA resolution 36/112 of 10 December 1981 on the “Review of the multilateral treaty-making process” in which the UNGA emphasized the importance of multilateral treaties as a primary source of international law; recognized the burden that multi-lateral treaty-making places upon governments, the UN and the international community in general; and requested the UN Secretary-General to prepare a new Handbook of Final Clauses. (first published in 1957)

Latest trends in international treaty-making

1. **Moving away from traditional reservations**

- Traditionally, treaties included express provisions allowing or regulating reservations (i.e., unilateral statements by a state to exclude or modify the legal effect of certain treaty provisions).
- New trend: some modern multilateral treaties either:
 - prohibit reservations altogether, e.g., the Rome Statute of the International Criminal Court (1998), or
 - limit reservations strictly to maintain normative integrity, especially in human rights or environmental treaties.

Why? Reservations can weaken treaty coherence and universality. For normative treaties, allowing too much flexibility undermines collective goals.

Latest trends contd.

2. Seeking broader participation beyond states

- Traditionally, only sovereign states were parties.
- New trend: Growing inclusion or recognition of:
 - IO's (e.g., the EU is a party to many treaties),
 - Indigenous peoples, NGOs, or private actors in drafting or implementation stages (e.g., Paris Agreement).
- Hybrid governance models are increasingly the norm.

Latest trends contd.

3. Opting for modular and flexible treaty frameworks

- Traditionally, monolithic treaties were considered ideal
- New trend: Instead of one monolithic treaty:
 - Framework conventions (e.g., UNFCCC 1992) with protocols (Kyoto 1997, Paris 2015).
 - Soft law instruments (guidelines, declarations) used alongside binding treaties.
- Advantage: Easier negotiation, adaptation to evolving issues, and broader consensus.

Latest trends contd.

4. Increasing use of soft law and informal agreements

- Growth of non-binding instruments that exert significant normative influence
 - UNGA resolutions
 - G20 communiqués
- States often prefer flexibility over the rigidity of formal treaties, especially in fast-moving areas
 - cybersecurity,
 - climate change,
 - AI governance.

Latest trends contd.

5. Integrating scientific and technical expertise

- Traditionally, sovereign governments' versions were hardly contested; real-time fact checking had little room
- New trend: Many new treaties (especially on climate, biodiversity, public health) now:
 - Incorporate scientific panels, technical bodies, or adaptive mechanisms (e.g., IPCC under UNFCCC).
 - Use dynamic reference clauses to update standards without renegotiation.

Latest trends contd.

6. Monitoring, Compliance, and Transparency Mechanisms

- Traditionally, State self-reporting was the only way
- New trend: Shift from solely state self-reporting to independent review bodies, e.g.:
 - Human Rights Treaty Bodies (e.g., UN-CAT),
 - Paris Agreement's Enhanced Transparency Framework.
- New treaties emphasize implementation support over punitive enforcement.

Latest trends contd.

7. Emphasis on universality and progressive development

- Many treaties (e.g., UN Convention on the Rights of Persons with Disabilities, Paris Agreement) aim for universal ratification and include progressive implementation mechanisms.
- Instead of minimum standards with reservations, they promote commitment with capacity-building.

Registration of treaties with international bodies

- The registration of treaties with international bodies—particularly with the United Nations—is a critical step in formalizing and publicizing international agreements.
- This process is guided by
 - legal obligations,
 - political motivations, and
 - transparency principles.
- Process, legal basis, and broader relevance of registration:

Registration contd.

1. Legal Basis: Article 102 of the UN Charter

“Every treaty and every international agreement entered into by any Member of the United Nations... shall as soon as possible be registered with the Secretariat and published by it.”

Thus,

- Registration is mandatory for UN members.
- Unregistered treaties cannot be invoked before any UN organ, including the ICJ.

Registration contd.

2. Where and How Treaties Are Registered

A. United Nations (UN Secretariat)

- Treaties are submitted to the UN Treaty Section.
- They are registered by:
 - Member state(s)/ intergovernmental organization (IGO), or a UN specialized agency.
 - Often with a cover letter from a country's Permanent Mission to the UN, NY.
- Once registered, each is
 - Published in the UN Treaty Series (UNTS),
 - Assigned a registration number, and
 - Included in the UN Treaty Collection online.

Registration contd.

B. Other International Bodies (selected examples)

<u>Body</u>	<u>Scope of Treaty Registration</u>	<u>Examples</u>
International Civil Aviation Organization (ICAO)	Air services agreements	Bilateral air transport treaties
World Intellectual Property Organization (WIPO)	IP-related treaties, such as copyright & patent cooperation	Madrid Agreement, Patent Cooperation Treaty
International Labour Organization (ILO)	Labor-related conventions & protocols	ILO Conventions ratified by states
World Trade Organization (WTO)	Trade agreements, accession documents, and dispute settlement	WTO accession agreements
International Atomic Energy Agency (IAEA)	Safeguards and nuclear cooperation agreements	Comprehensive Safeguards Agreement
International Maritime Organization (IMO)	Maritime safety and pollution conventions	SOLAS, MARPOL treaties

Registration contd.

3. Why Register a Treaty?

For Legal Validity

- Registration ensures the agreement has legal standing at the UN.
- Without registration, it cannot be invoked in a UN dispute (e.g. at the ICJ).

For Transparency

- The UN Charter emphasizes publicity of international commitments to avoid secret treaties (a post–WWI lesson).
- Helps other states understand global treaty norms and obligations.

For Diplomatic Recognition

- Often used to affirm state recognition, particularly in bilateral diplomatic relations (e.g., new countries or restored ties).

Registration contd.

4. Types of Documents Registered

- Bilateral treaties
 - General purpose treaties (e.g., establishing diplomatic relations, co-signed)
 - Focused treaties (e.g., trade, air services, investment, extradition, peace and friendship, etc., by a party)
- Multilateral treaties (e.g. conventions on human rights, environment)
- Memoranda of Understanding (MOUs) (often if binding)
- Declarations, protocols, and letters related to treaty implementation
- Foundational instruments may/may not be registered with the UN
 - SAARC Charter is not registered (SAARC has an observer status at the UN).
 - North Atlantic Treaty is registered (NATO is not an observer but UN and NATO collaborate and maintain liaison offices at each other's HQs- NY and Brussels).

Registration contd.

5. Timing and Retrospective Registration

- Ideally “as soon as possible”, but in practice, registration may occur months or even years after signing.
- Retroactive registration is permitted, but late registration may raise questions of transparency or political motives.

6. Where to Access Registered Treaties

- [UN Treaty Collection](#): Official online repository.
- UN Treaty Series volumes: Printed/published sets since 1946.
- iLibrary or National Archives: For older or country-specific collections.

Registration contd. : Some interesting facts

- As of 2024, there are over 560,000 treaty actions (registrations, accessions, ratifications, reservations, etc.) in the UN Treaty Collection. Those involving Nepal appear to be less than a hundred. Look into it.
- The 1923 UK-Nepal Treaty of Perpetual Peace and Friendship was registered with, and published in the Treaty Series of, the League of Nations in 1925.
- India registered the India-Nepal Treaty of Peace and Friendship (signed on 31 July 1950 in Kathmandu) with the United Nations on 13 July 1951. It's listed in the UN Treaty Series as No. 1302.
- By way of the transfer of treaty registration responsibilities from the League of Nations to the UN in 1946, the first treaty registered with the UN involving Nepal was one of Nepal's joining the Convention on International Civil Aviation and its International Air Services Transit Agreement, both concluded in December 1944.

Thank You!