



THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING

Towards Early Ratification

I. BACKGROUND

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization builds on the Convention on Biological Diversity and supports the further implementation of one of its three objectives: the fair and equitable sharing of benefits arising out of the utilization of genetic resources.

Heads of State at the World Summit on Sustainable Development (Johannesburg, September 2002) first recognised the need for an international regime to promote and safeguard the fair and equitable sharing of benefits and called for negotiations to be carried out within the framework of the Convention¹. The Convention's Conference of the Parties responded at its seventh meeting, in 2004, by mandating its Ad Hoc Open-ended Working Group on Access and Benefit-sharing to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing in order to effectively implement Articles 15 (Access to Genetic Resources) and 8(j) (Traditional Knowledge) of the Convention and its three objectives.

After six years of negotiations, the tenth meeting of the Conference of the Parties adopted the Nagoya Protocol on 29 October 2010, in Nagoya, Japan.

The Conference of the Parties and the sixty-fifth session of the United Nations General Assembly called upon the Convention's 193 Parties to sign the Nagoya Protocol at the

earliest opportunity, and to deposit their instruments of ratification, acceptance, approval, or instruments of accession, as appropriate, as soon as possible.

The Nagoya Protocol will enter into force 90 days after the deposit of the fiftieth instrument of ratification, acceptance, approval, or accession.

The eleventh meeting of the Conference of the Parties, taking place in India from 8 to 19 October 2012, is the target for convening the Nagoya Protocol's first meeting of the Parties. To achieve this, the Nagoya Protocol must enter into force no later than 8 October 2012, with the fiftieth instrument of ratification deposited no later than 10 July 2012.

The Nagoya Protocol's early entry into force is strategically important for the Convention's successful implementation. Section II provides a rationale for early ratification. Section III describes how to sign or become a Party to the Nagoya Protocol.

II. RATIONALE FOR EARLY RATIFICATION OF THE NAGOYA PROTOCOL

The Nagoya Protocol significantly advances the Convention's third objective by providing greater legal certainty and transparency for both providers and users of genetic resources. Specific obligations to support compliance with domestic legislation or regulatory requirements of the Party providing genetic resources and contractual obligations reflected in mutually agreed terms are a significant innovation of the

¹ See Par. 44(o) of the Plan of Implementation of the World Summit on Sustainable Development.



Nagoya Protocol. These compliance provisions as well as provisions establishing more predictable conditions for access to genetic resources will contribute to ensuring the sharing of benefits. In addition, the Protocol's provisions on access to traditional knowledge held by indigenous and local communities when it is associated with genetic resources will strengthen the ability of these communities to benefit from the use of their knowledge, innovations and practices.

By promoting the use of genetic resources and associated traditional knowledge, and by strengthening the opportunities for fair and equitable sharing of benefits from their use, the Protocol will create incentives to conserve biological diversity, sustainably use its components, and further enhance the contribution of biological diversity to sustainable development and human well-being.

III. HOW TO SIGN OR BECOME A PARTY TO THE NAGOYA PROTOCOL

The United Nations Secretary-General acts as Depositary for the Nagoya Protocol through the United Nations Treaty Section in New York. The Nagoya Protocol will be open for signature by Parties to the Convention from 2 February 2011 until 1 February 2012 at United Nations Headquarters in New York.

Certified true copies of the Nagoya Protocol are available from the Depositary at:

<http://treaties.un.org/doc/source/signature/2010/Ch-XXVII-8-b.pdf>

States and regional economic integration organizations that are Parties to the Convention on Biological Diversity are eligible to sign or become a Party to the Nagoya Protocol.

(a) Signature

Parties to the Convention are encouraged to sign the Protocol as soon as possible.

Signature would not result in any positive legal obligations under the Nagoya Protocol. However, it would indicate the signatory's intention to take steps to express its consent to be bound by the Protocol at a later date. Signature also creates an obligation, in the period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the Protocol.²

A Head of State, Head of Government or Minister for Foreign Affairs may sign the Nagoya Protocol without an instrument of full powers.

All other representatives must present to the Depositary a valid instrument of full powers authorising them to sign. An instrument of full powers must:

- (i) Be signed by a Head of State, Head of Government or Minister for Foreign Affairs;
- (ii) Indicate the title of the treaty (e.g., Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity); and
- (iii) State the full name and title of the representative authorised to sign.

Some countries have deposited general full powers with the Secretary-General. General full powers do not specify the treaty to be signed, but rather authorise a specified representative to sign all treaties of a certain kind.

(b) Depositing instruments of ratification, acceptance, approval or accession

Parties to the Convention that sign the Nagoya Protocol before the closing date for signature may then proceed to take steps at the domestic level that would lead to depositing their instruments of ratification, acceptance or approval with the Depositary.

Those Parties to the Convention that may not be able to sign the Nagoya Protocol by 1 February 2012, but still wish to become Parties, may accede to it by depositing an instrument of accession with the Depositary. Ratification, acceptance, approval and accession have the same legal effect.

The relevant instruments represent an expression of explicit consent, at the international level, by a State or regional economic integration organization to be legally bound by the Nagoya Protocol. They are signed either by a Head of State, Head of Government or by a Minister for Foreign Affairs.

Annex I describes how to make arrangements with the UN Treaty Section to sign a treaty and ratify, accept, approve or accede to it. Annex II provides model instruments of: (i) full powers; (ii) ratification, acceptance or approval; and (iii) accession.³

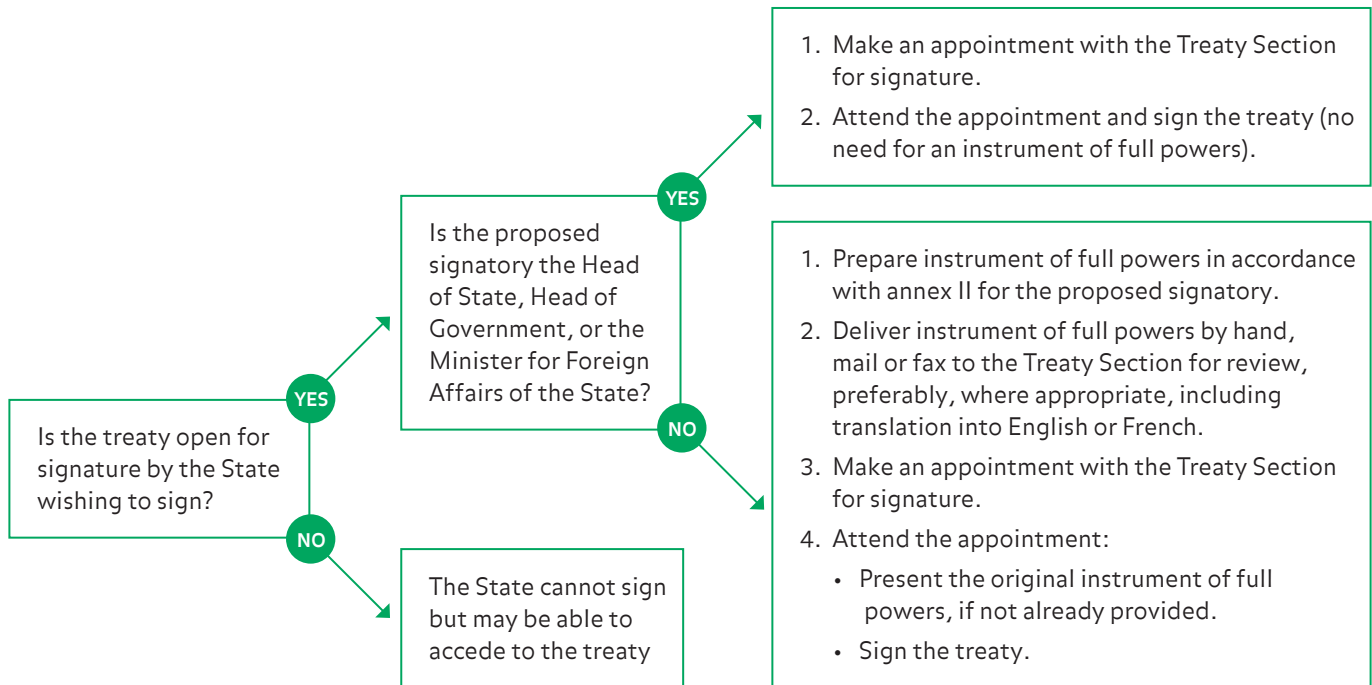
The UN Treaty Section can be contacted at:
United Nations Headquarters, Room No. M-13002,
New York, NY 10017 USA
Tel: +1.212.963.5047; Fax: +1.212.963.3693
email: treaty@un.org.

² Adapted from the UN Treaty Handbook, prepared by the Treaty Section of the Office of Legal Affairs, United Nations, (2006 Reprint).

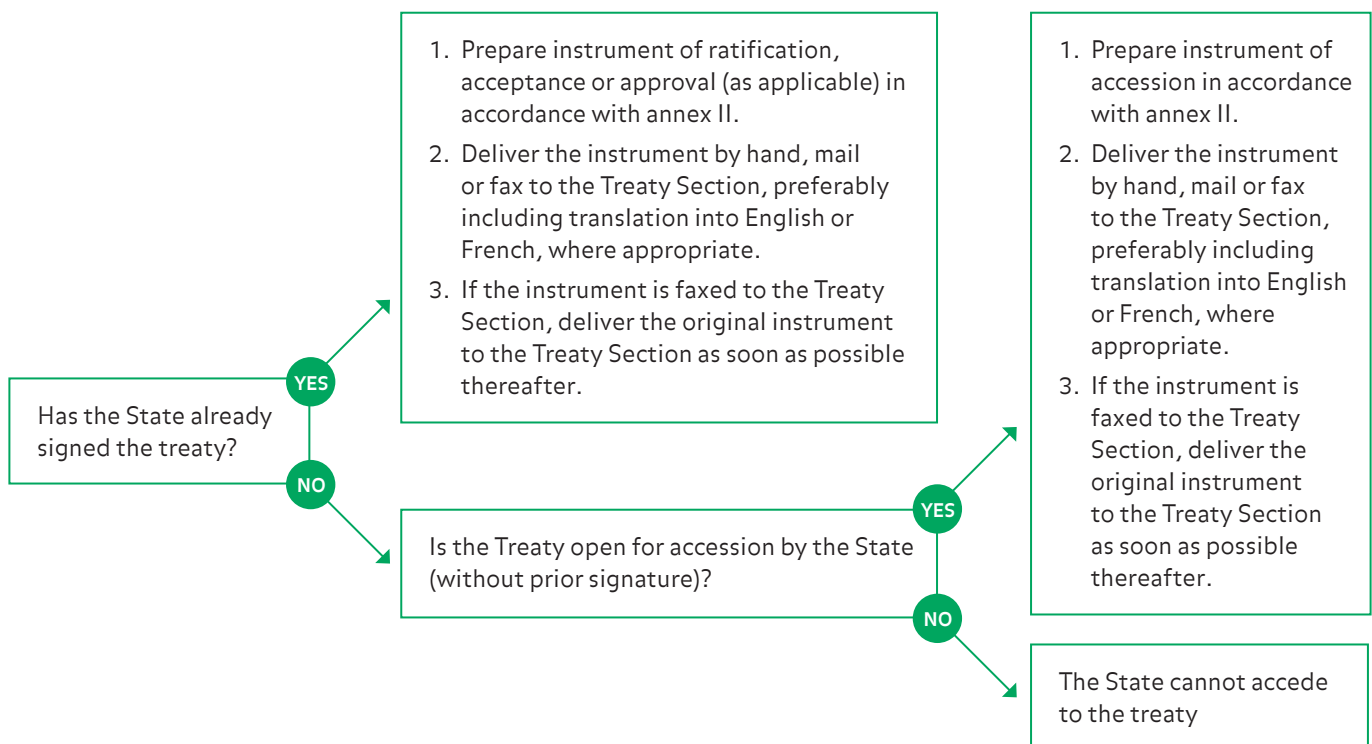
³ Annexes I and II adapted from the UN Treaty Handbook, United Nations, (2006 Reprint).

ANNEX I

Signing a Multilateral Treaty



Ratifying, Accepting, Approving or Acceding to a Multilateral Treaty



ANNEX II

Model Instrument of Full Powers

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORISE [name and title] to [sign*, ratify, denounce, effect the following declaration in respect of, etc.] the [title and date of treaty, convention, agreement, etc.] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]

* Subject to the provisions of the treaty, one of the following alternatives is to be chosen: [subject to ratification] or [without reservation as to ratification]. Reservations made upon signature must be authorised by the full powers granted to the signatory.

Model Instrument of Ratification, Acceptance or Approval

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

AND WHEREAS the said [treaty, convention, agreement, etc.] has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned [treaty, convention, agreement, etc.], [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

Model Instrument of Accession

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

ACCESSION

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]