



## BECOMING A PARTY TO THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

# BECOMING A PARTY TO THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

*A GUIDE FOR THE AFRICAN REGION*

WORLD HEALTH ORGANIZATION  
REGIONAL OFFICE FOR AFRICA  
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## ACKNOWLEDGEMENTS

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## FOREWORD

The World Health Organization Regional Office for Africa (WHO AFRO) in collaboration with the Convention Secretariat to the WHO FCTC has been advocating for Parties to accelerate their processes of ratifying or acceding to the Protocol to Eliminate Illicit Trade in Tobacco Products (ITP). Regional multi-country forums and national workshops to raise awareness of the ITP among Member States of the WHO African Region have been very successful.

During these forums, several delegations from Member States have identified an existing knowledge gap on the requirements for the process of ratification or accession at country level. During a Multi-country Workshop on the Protocol to Eliminate Illicit Trade in Tobacco Products held in Dakar in November 2015, WHO AFRO was requested to elaborate a simple guide to assist Member States in understanding the process.

Considering that different countries have different processes for ratifying protocols, this guide provides a general road map on the process that country teams may undertake to secure ratification of or accession to the Protocol to Eliminate Illicit Trade in Tobacco Products.

This guide is intended for use by government sectors involved in the process of ratifying or acceding to the ITP and its implementation, including ministries of health, national revenue and customs authorities, ministries of foreign affairs; ministries of justice and public prosecutors' chambers, cabinet offices, ministerial councils and parliaments, among others.

**Dr Abdikamal Alisalad**  
**Acting Director, Noncommunicable Diseases Cluster**  
**WHO Regional Office for Africa**

# THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

## INTRODUCTION

The Protocol to Eliminate Illicit Trade in Tobacco Products, the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), was adopted on 12 November 2012 at the Fifth Session of the Conference of the Parties to the WHO FCTC in Seoul, Republic of Korea (WHO, 2012). The Protocol is based on Article 15 of the WHO FCTC. It is a treaty within a treaty and therefore, only States that are Parties to the WHO FCTC may be Parties to the Protocol, and the Protocol shall be binding only on the Parties thereto (WHO, 2003).

The Protocol to Eliminate Illicit Trade in Tobacco Products (ITP) aims at eliminating all forms of illicit trade in tobacco products. It provides tools for preventing illicit trade by securing the supply chain, including by establishing an international tracking and tracing system, by countering illicit trade through effective law enforcement measures and by enabling international cooperation.

The Protocol will enter into force on the 90th day following the date of deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession. If the Protocol is already in force by the time a given State submits its instrument of ratification, the Protocol will enter into force for that State 90 days after the receipt of the instrument by the UN Treaty Section. AFRO invites all States in the Region that are Parties to the WHO FCTC to ratify the ITP as soon as possible so as to give maximum effect to the Protocol.

## CONSEQUENCES OF ILLICIT TRADE IN TOBACCO PRODUCTS

### **PUBLIC HEALTH IMPACTS**

Illicit trade in tobacco products results in increased accessibility, affordability and consumption of tobacco products. It gives rise to increased prevalence of tobacco use, which ultimately leads to a surge in tobacco-related diseases. This impacts negatively on public health efforts to reduce the burden of disease, disability and deaths attributed to noncommunicable diseases. It undermines legal restrictions and health regulations, such as those relating to health warnings and sale to minors. It allows tobacco companies to subvert international cooperation in tobacco control (WHO, 2015).

### **LOSS OF GOVERNMENT REVENUE**

Illicit trade in tobacco means loss of huge amounts of tax revenue for governments each year. Illicit trade in tobacco accounts for about 15-20% of tobacco use globally, resulting in a loss of about US\$ 31 billion in government revenue to illicit trade. It also distorts the market, thus suppressing sales by compliant companies, which results in reduced government revenue. This loss in tax revenue reduces the ability by governments to provide public services including health care. Eliminating illicit trade in tobacco products would reduce premature deaths attributable to tobacco products by one million every six years, mostly in middle- and low-income countries (Joossens L et al, 2010).

### **FINANCING OF ORGANIZED CRIME**

Illicit tobacco trade sponsors criminals and funds organized crime. These include drugs, human and arms trafficking, and armed insurgent groups with a possible impact on the general level of corruption and security. Tobacco is easy to transport and is a "fast moving" commodity. Most jurisdictions provide for the seizure and forfeiture of

seized tobacco products and the vessels that transport them, but not the arrest of the perpetrators. These factors make illicit trade in tobacco a lucrative revenue stream for criminal groups (Collin J et al, 2004).

The Protocol to Eliminate Illicit Trade in Tobacco Products will help to protect people across the globe from the health risks of tobacco use and exposure to tobacco smoke. The tobacco epidemic is one of the

## **BENEFITS OF BECOMING A PARTY TO THE PROTOCOL**

biggest public health threats the world has ever faced. It kills nearly six million people every year. Approximately one person dies every six seconds due to tobacco and this accounts for one in 10 adult deaths globally.

There are numerous benefits of becoming a party to the Protocol, which include:

- (a) The obligation to impose markings will assist in determining the origin of tobacco products and in identifying legal and illegal tobacco products.
- (b) Requirements for an effective tracking and tracing regime will secure the distribution system and reduce revenue leakage.
- (c) Requirement for licensing for production and distribution will ensure that the government knows who is involved in this trade
- (d) Monitoring cross-border trade.
- (e) Facilitating information exchange among customs, tax and other authorities.

- (f) Setting up appropriate penalties and remedies through legislation against illicit trade.
- (g) Facilitating destruction of confiscated manufacturing equipment and seized tobacco.
- (h) Promoting cooperation between national agencies and regional/ international inter-governmental organizations to eliminate illicit trade.
- (i) Promoting cooperation between states to monitor and eliminate illicit trade in tobacco products.

## **BECOMING A PARTY TO THE PROTOCOL**

The Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by Parties to the WHO FCTC on 12 November 2012. In accordance with its Article 43, the Protocol was open for signature by all eligible Parties until 9 January 2014. Since 10 January 2014, the Protocol can no longer be signed. In this section, we shall describe how a state can become a party to the Protocol. Currently, there are Parties that have signed the Protocol and would like to ratify it, while there are those that have not signed but would like to accede to it. Only Parties to the WHO FCTC may be Parties to the Protocol.

### **SIGNING THE PROTOCOL**

Once the Protocol was adopted, Parties to the WHO FCTC were free to sign it as an expression of their support to the Protocol. Signature allows a State to formally express its support for the Protocol, while allowing it to undertake the necessary preparations domestically before consenting to be bound by it. After signing the Protocol, there are no legal obligations imposed on a signatory State.

### *Importance of signing a treaty:*

- (a) States indicate their intention to take steps to be bound by the treaty at a later date.
- (b) Signing creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.
- (c) Signature is the first step in the process of becoming a Party.

### **RATIFYING THE PROTOCOL**

By ratifying the Protocol, Parties demonstrate their willingness to implement the obligations contained in the Protocol. Such Parties therefore consent to be bound by the Protocol.

Any Party to the WHO FCTC can ratify, accept, or approve the Protocol, thereby becoming a Party to the Protocol. The legal process referred to as “ratification” takes place at two levels, which are often confused because the same term is frequently used for both.

#### *(a) Ratification at the national level*

Most national legal systems require formal approval of an international treaty by a high-level political authority, for example the cabinet or national parliament. Depending on the legal system of the State, the domestic process may or may not include amendments to existing laws or developing new legislation to implement the Protocol. The domestic process must be completed before initiating the international process. This domestic process is determined by the national constitution and legislation of a given State, and is therefore different for every State (Annex 1).

### *(b) Ratification at the international level*

Ratification at the international level is necessary, regardless of national procedures. Upon ratification at the international level, the State then becomes legally bound by the treaty.

The process follows an internationally defined procedure, which is therefore the same for all States as follows:

- (i) The instrument of ratification, acceptance or approval, which normally consists of a one-page document, (Annex 2) has to be signed by the Head of State, Head of Government or Minister of Foreign Affairs.
- (ii) The instrument **MUST** be mailed or hand-delivered to the Depository of the Protocol, the Treaty Section of the United Nations Secretariat in New York.
- (iii) If the instrument of ratification, acceptance or approval is not hand-delivered, it is strongly advised that a representative of the State call the UN Treaty Section to follow up and enquire about the receipt of the Protocol instrument (phone: +1 (212) 963-5047, fax: +1 (212) 963-3693).
- (iv) *For prompt action by the UN Treaty Section, it is advised that a courtesy translation in English or French of the ratification instrument be provided.*

The date of receipt of the instrument of ratification, acceptance or approval by the UN Treaty Section is the official date of deposit.

### **ACCESSION**

The process of accession provides Parties that had not signed the Protocol by 9 January 2014 with a means of becoming Parties to the Protocol. Accession has the same legal effect as ratification,

acceptance or approval. Accession requires only one step, namely, the deposit of an instrument of accession with the UN Treaty Section (See Annex 2). The process of accession is the same as ratification.

A State or regional integration organization may also express its consent to be bound by the Convention or the Optional Protocol by depositing an instrument of accession with the Secretary-General of the United Nations.

### **ACCEPTANCE OR APPROVAL**

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states, acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

### **WHO SIGNS THE PROTOCOL ON BEHALF OF A PARTY?**

Heads of State, Heads of Government or Ministers of Foreign Affairs are empowered to sign the treaty on behalf of a State. Other representatives intending to sign the treaty must have the appropriate full powers, issued by one of the above authorities, which expressly authorize them to sign the Protocol. States wishing to sign the Protocol through a representative should provide copies of the required full powers in advance to the following address:

**Treaty Section  
Office of Legal Affairs  
United Nations Headquarters  
New York, New York  
United States of America  
Tel: +1 212 963 50 47  
Fax: +1 212 963 36 93  
E-mail: [treaty@un.org](mailto:treaty@un.org)**

**COMING INTO FORCE OF THE PROTOCOL AFTER INTERNATIONAL RATIFICATION OR ACCESSION**

After a Party to the WHO FCTC ratifies, accedes to, accepts, approves or formally confirms the Protocol, it shall enter into force on the ninetieth (90th) day following the date of deposit of the relevant instrument.

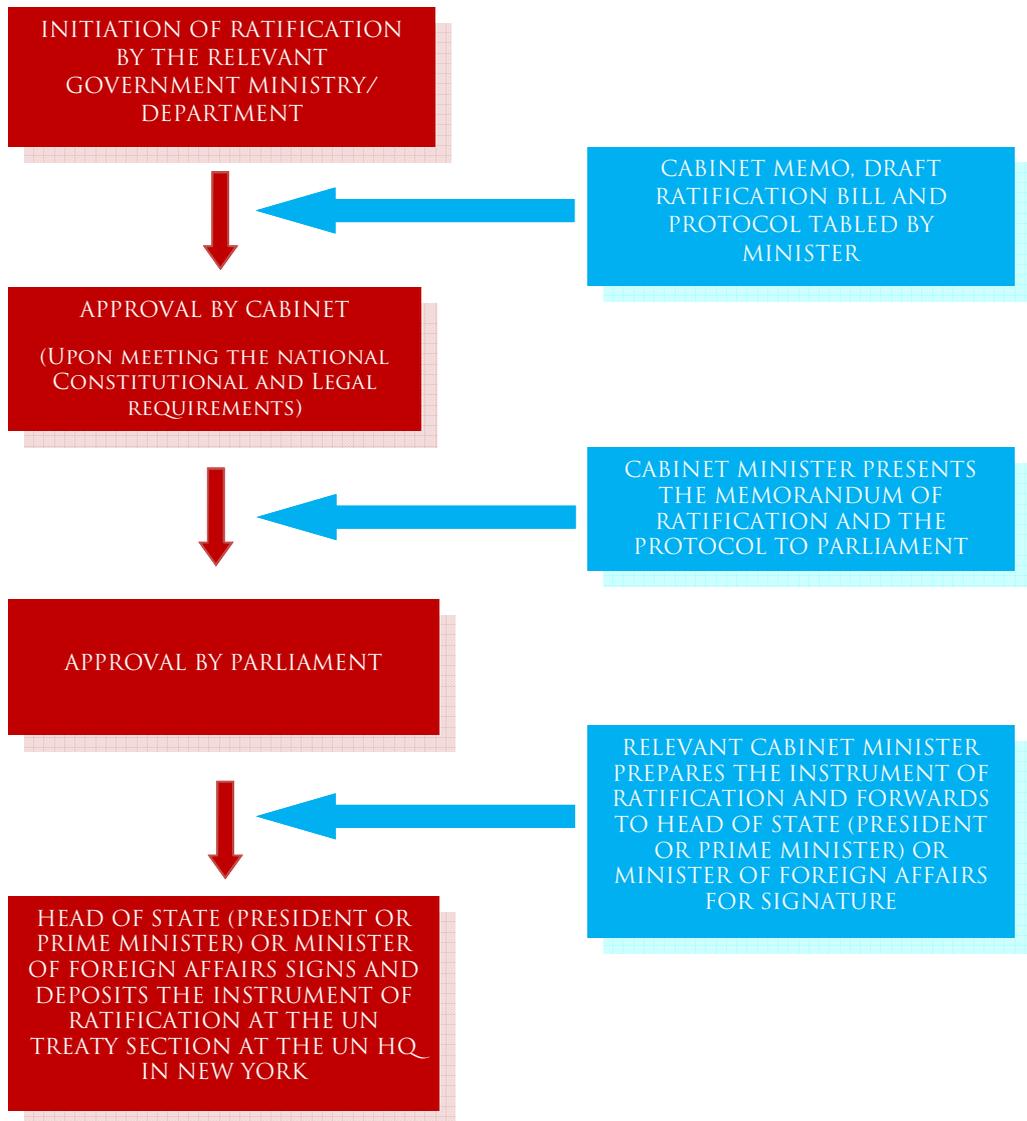
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## ANNEXES

### ANNEX 1: EXAMPLE OF THE PROCESS OF RATIFICATION



**ANNEX 2: MODEL INSTRUMENT OF RATIFICATION/  
ACCEPTANCE/APPROVAL**

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

**INSTRUMENT OF RATIFICATION/ACCEPTANCE/APPROVAL**

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WHEREAS the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted on 12 November 2012 in Seoul, Republic of Korea,

AND WHEREAS the said Protocol to Eliminate Illicit Trade in Tobacco Products has been signed on behalf of the Government of [name of State]. On [date of State's signature of the Protocol to Eliminate Illicit Trade in Tobacco Products],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned Protocol, 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]

= = =

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**Acting Director, Noncommunicable Diseases Cluster**  
**WHO Regional Office for Africa**

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There are numerous benefits of becoming a party to the Protocol, which include:

- (a) The obligation to impose markings will assist in determining the origin of tobacco products and in identifying legal and illegal tobacco products.
- (b) Requirements for an effective tracking and tracing regime will secure the distribution system and reduce revenue leakage.
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### **SIGNING THE PROTOCOL**

Once the Protocol was adopted, Parties to the WHO FCTC were free to sign it as an expression of their support to the Protocol. Signature allows a State to formally express its support for the Protocol, while allowing it to undertake the necessary preparations domestically before consenting to be bound by it. After signing the Protocol, there are no legal obligations imposed on a signatory State.

*Importance of signing a treaty:*

- (a) States indicate their intention to take steps to be bound by the treaty at a later date.
- (b) Signing creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.
- (c) Signature is the first step in the process of becoming a Party.

**RATIFYING THE PROTOCOL**

By ratifying the Protocol, Parties demonstrate their willingness to implement the obligations contained in the Protocol. Such Parties therefore consent to be bound by the Protocol.

Any Party to the WHO FCTC can ratify, accept, or approve the Protocol, thereby becoming a Party to the Protocol. The legal process referred to as “ratification” takes place at two levels, which are often confused because the same term is frequently used for both.

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Most national legal systems require formal approval of an international treaty by a high-level political authority, for example the cabinet or national parliament. Depending on the legal system of the State, the domestic process may or may not include amendments to existing laws or developing new legislation to implement the Protocol. The domestic process must be completed before initiating the international process. This domestic process is determined by the national constitution and legislation of a given State, and is therefore different for every State (Annex 1).

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Ratification at the international level is necessary, regardless of national procedures. Upon ratification at the international level, the State then becomes legally bound by the treaty.

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**ACCESSION**

The process of accession provides Parties that had not signed the Protocol by 9 January 2014 with a means of becoming Parties to the Protocol. Accession has the same legal effect as ratification,

acceptance or approval. Accession requires only one step, namely, the deposit of an instrument of accession with the UN Treaty Section (See Annex 2). The process of accession is the same as ratification.

A State or regional integration organization may also express its consent to be bound by the Convention or the Optional Protocol by depositing an instrument of accession with the Secretary-General of the United Nations.

### **ACCEPTANCE OR APPROVAL**

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states, acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

### **WHO SIGNS THE PROTOCOL ON BEHALF OF A PARTY?**

Heads of State, Heads of Government or Ministers of Foreign Affairs are empowered to sign the treaty on behalf of a State. Other representatives intending to sign the treaty must have the appropriate full powers, issued by one of the above authorities, which expressly authorize them to sign the Protocol. States wishing to sign the Protocol through a representative should provide copies of the required full powers in advance to the following address:

**Treaty Section  
Office of Legal Affairs  
United Nations Headquarters  
New York, New York  
United States of America  
Tel: +1 212 963 50 47  
Fax: +1 212 963 36 93  
E-mail: [treaty@un.org](mailto:treaty@un.org)**

**COMING INTO FORCE OF THE PROTOCOL AFTER INTERNATIONAL RATIFICATION OR ACCESSION**

After a Party to the WHO FCTC ratifies, accedes to, accepts, approves or formally confirms the Protocol, it shall enter into force on the ninetieth (90th) day following the date of deposit of the relevant instrument.

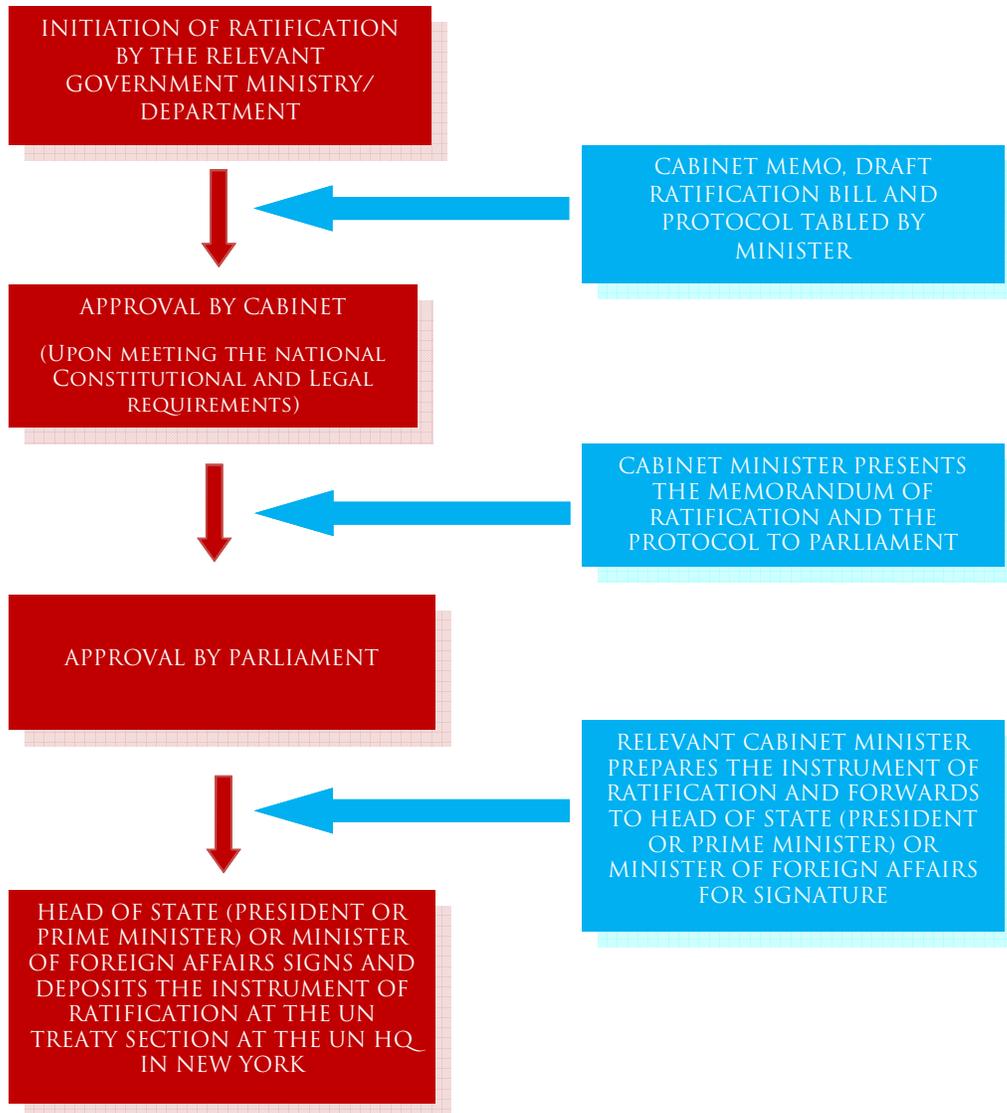
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## ANNEXES

### ANNEX 1: EXAMPLE OF THE PROCESS OF RATIFICATION



**ANNEX 2: MODEL INSTRUMENT OF RATIFICATION/  
ACCEPTANCE/APPROVAL**

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

**INSTRUMENT OF RATIFICATION/ACCEPTANCE/APPROVAL**

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WHEREAS the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted on 12 November 2012 in Seoul, Republic of Korea,

AND WHEREAS the said Protocol to Eliminate Illicit Trade in Tobacco Products has been signed on behalf of the Government of [name of State]. On [date of State's signature of the Protocol to Eliminate Illicit Trade in Tobacco Products],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned Protocol, 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]

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