



International Coffee Organization
Organización Internacional del Café
Organização Internacional do Café
Organisation Internationale du Café

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**Depositary for the
International Coffee Agreement 2007**

The Executive Director presents his compliments and attaches a letter to all Members on the issue of the future Depositary of the International Coffee Agreement 2007 and information about the available options.



	INTERNATIONAL		COFFEE		ORGANIZATION
ORGANIZACIÓN	INTERNACIONAL	DEL	CAFÉ		
ORGANIZAÇÃO	INTERNACIONAL	DO	CAFÉ		
ORGANISATION	INTERNATIONALE	DU	CAFÉ		

NÉSTOR OSORIO
Executive Director

Dear ICO Member,

As you will recall, at its 98th Session in September 2007, the International Coffee Council approved Resolution 431 adopting the text of a new International Coffee Agreement 2007, a copy of which is contained in document ICC-98-6.

The Council noted that the Treaty Section of the United Nations had confirmed that it could now only accept the deposit of international agreements in the official languages of the United Nations. As a consequence, it could not accept an authentic text in Portuguese of the International Coffee Agreement 2007, which made it impossible to continue to use the United Nations in New York as a Depository.

Paragraph (10) of Article 2 (Definitions) of the 2007 Agreement provides that the future Depository shall be designated by decision of the Council under the 2001 Agreement, to be taken by consensus before 31 January 2008.

Following the Council Session in September, I have been looking at the way forward and consulting with a number of organizations to review the options for fulfilling depository functions, and my conclusions are presented in the attached document.

Yours faithfully,



Néstor Osorio

OPTIONS FOR THE DESIGNATION OF A DEPOSITARY FOR THE INTERNATIONAL COFFEE AGREEMENT 2007

1. Paragraph (1) of Article 76 (Depositaries of treaties) of the 1969 Vienna Convention on the Law of Treaties provides that “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 organization or the chief administrative officer of the organization”.
2. Paragraph (10) of Article 2 (Definitions) of the International Coffee Agreement 2007 provides that the Depositary shall mean the intergovernmental organization or Contracting Party to the International Coffee Agreement 2001 designated by decision of the Council under the 2001 Agreement, to be taken by consensus before 31 January 2008.
3. This means that Members of the 2001 Agreement could designate the International Coffee Organization or its chief administrative officer (in this case the Executive Director, as provided for in Articles 28 and 17 of the 2001 and 2007 Agreements, respectively) to be the Depositary of the International Coffee Agreement 2007.
4. The functions of the depositary are specified in Article 77 (Functions of depositaries) of the Vienna Convention referred to above and include preparing certified copies of the Agreement, examining instruments received from States and ensuring that they are in due and proper form, and informing Members about communications relating to the treaty and when the requirements for entry into force of the treaty have been met.
5. The Executive Director has also approached two United Nations agencies to ask if they could fulfil depositary functions and accept the deposit of the authentic texts in the four official languages of the Organization. The International Maritime Organization (IMO) has informed the ICO that it acts as Depositary for maritime related treaties. The Food and Agriculture Organization of the United Nations (FAO) acts as Depositary for treaties within the broad perspective of food and agriculture. While both organizations would be willing to provide assistance and cooperate as necessary, they have indicated that they would not be in a position to perform the full functions of depositary for the 2007 Agreement in all four languages of the Organization¹.
6. It may be noted that the International Coffee Organization has over the last 45 years acted to inform Members of the legal requirements for the implementation of international treaties by notifying Members and potential Members of the procedures required under

¹ *The FAO would accept an authentic text in Portuguese but activities related to the depositary function such as correspondence with Members could not be undertaken in languages other than the official languages of the United Nations.*

international law, including the provision of model instruments to be sent to the depositary organization. The Organization has therefore built up, taking full advantage of the recommendations of the United Nations Treaty Section, considerable familiarity with procedures required in connection with membership of the Organization. Moreover, the legal office of the United Nations indicated in a recent letter its willingness to continue to assist the ICO as needed. The IMO has also offered its assistance.

7. Most, if not all, 77 Members of the 2001 Agreement have missions in London able to perform the duties related to the legal procedures for the deposit of notifications of membership with the ICO in London.

8. In the light of the above, and the clear communication advantages, the Executive Director having considered the options, recommends the designation of the International Coffee Organization as the Depositary of the 2007 Agreement.

9. The Annex contains Part VII of the Vienna Convention (Depositaries, notifications, corrections and registration).

1969 VIENNA CONVENTION ON THE LAW OF TREATIES**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 organization or the chief administrative officer of the organization.

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 organization 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 authorized 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 procès-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 authorization for it to perform the acts specified in the preceding paragraph.