

# COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF THE NETHERLANDS<sup>1</sup>

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<sup>1</sup> We are grateful for the assistance of Gerard Limburg, former Director of Treaties, Ministry of Foreign Affairs, The Netherlands, in compiling this information.



## IMPORTANT NOTES

This document forms part of the “**Compilation of Constitutional and Legislative Provisions on Treaty Practice of Selected States and International Organisations**” (**Compilation of Provisions on Treaty Practice**) which has been published as an online resource by the British Institute of International and Comparative Law (the Institute) and the Centre for International Law, National University of Singapore (CIL). The full Compilation is available at [www.biicl.org](http://www.biicl.org) and [www.cil.nus.edu.sg](http://www.cil.nus.edu.sg)

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Some constitutional and legislative provisions contained in the Compilation of Provisions on Treaty Practice were not adopted in the English language. Where an English translation has been published by a legislative, judicial or governmental body in the State concerned, that translation is provided here. In cases where no such English translation is available, the Institute and CIL have endeavoured to produce a translation of the document after consulting lawyers from the relevant country.

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**Feedback request:** The two institutes will review, update and add to the Compilation from time to time. If you notice any errors, omissions, broken links or out of date material, or if you have any suggestions regarding the further development of this resource, please contact: Jill Barrett at the Institute ([j.barrett@biicl.org](mailto:j.barrett@biicl.org)) or Ranyta Yusran at CIL ([cilry@nus.edu.sg](mailto:cilry@nus.edu.sg)).

This document was last amended in December 2012.

## **1. Constitution of the Kingdom of the Netherlands (2002)**

[Extracts of relevant provisions]

...

### **Article 73**

1. The Council of State or a division of the Council shall be consulted on Bills and draft orders in council as well as proposals for the approval of treaties by the States General. Such consultation may be dispensed with in cases to be laid down by Act of Parliament.

...

### **Article 90**

The Government shall promote the development of the international legal order.

### **Article 91**

1. The Kingdom shall not be bound by treaties, nor shall such treaties be denounced, without the prior approval of the States General. The cases in which approval is not required shall be specified by Act of Parliament.
2. The manner in which approval shall be granted shall be laid down by Act of Parliament, which may provide for the possibility of tacit approval.
3. Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Houses of the States General only if at least two-thirds of the votes cast are in favour.

### **Article 92**

Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty, subject, where necessary, to the provisions of Article 91 paragraph 3.

**Article 93**

Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.

**Article 94**

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.

**Article 95**

Rules regarding the publication of treaties and decisions by international institutions shall be laid down by Act of Parliament.

...

**Article 120**

The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.

**Notes:**

- A full version of the Constitution in English translation, as published by the Ministry of the Interior and Kingdom Relations, Constitutional Affairs and Legislative Division, in collaboration with the Translation Department of the Ministry of Foreign Affairs, can be accessed on the website of the Government of the Netherlands at:

<http://www.government.nl/issues/constitution-and-democracy> (see Right-hand side of window)

or at:

<http://www.government.nl/issues/constitution-and-democracy/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html> (The above extracts are taken from this version).

- The official Dutch language version is available on the website of the Ministry of the Interior and Kingdom Relations at:

[http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum\\_06-12-2011](http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum_06-12-2011)

## 2. Charter of the Kingdom of the Netherlands 1954

(As amended in 2010)

### Note:

The Charter provides for the participation of the Governments of Aruba, Curaçao and St Maarten in the treaty-making process, and the extent of the Executive's ability to bind these territories (in Articles 24-28).

**Text of the Charter for the Kingdom of the Netherlands as last amended by the Kingdom Act in Connection with the Dismantling of the Present Constitutional Order of the Netherlands Antilles**

### § 1 General provisions

[Extracts of relevant provisions]

#### Article 1

...

1. The Kingdom shall consist of the Countries of the Netherlands, Aruba, Curaçao and St Maarten.
2. Bonaire, St Eustatius and Saba shall form part of the Dutch polity. Rules may be laid down and other specific measures may be introduced for these islands, in view of their economic and social circumstances, their substantial distance from the Netherlands in Europe, their island character, small size and population, their geographic location, their climate and other factors that distinguish them from the Netherlands in Europe.

...

#### Article 24

1. Agreements with other powers and with international organisations which affect Aruba, Curaçao or St Maarten shall be submitted to the representative



assembly of Aruba, Curaçao or St Maarten respectively at the same time as they are submitted to the States General.

2. If an agreement has been submitted for the tacit approval of the States General, the Ministers Plenipotentiary may, within the time-limit set for this purpose for the Senate and House of Representatives, communicate their wish that the agreement shall be subject to the express approval of the States General.
3. The preceding paragraphs shall apply *mutatis mutandis* in respect of the denunciation of international agreements, with the proviso in the case of paragraph 1 that the representative assembly of Aruba, Curaçao or St Maarten respectively shall be notified of the intended denunciation.

#### **Article 25**

1. The King shall not bind Aruba, Curaçao or St Maarten to international economic or financial agreements if the Government of the Country, indicating the reasons for considering that this would be detrimental to the Country, has declared that the Country should not be bound by them.
2. The King shall not denounce international economic or financial agreements in respect of Aruba, Curaçao or St Maarten if the Government of the Country, indicating the reasons for considering that a denunciation would be detrimental to the Country, has declared that denunciation should not take place with respect to that Country. An agreement may nevertheless be denounced if exclusion of the Country concerned from the denunciation is incompatible with the provisions of the agreement.

#### **Article 26**

If the Government of Aruba, Curaçao or St Maarten communicates its wish for the conclusion of an international economic or financial agreement that applies solely to the Country concerned, the Government of the Kingdom shall assist in the conclusion of such an agreement, unless this would be inconsistent with the Country's ties with the Kingdom.

#### **Article 27**

1. Aruba, Curaçao or St Maarten shall be consulted at the earliest possible stage in the preparation of agreements with other Powers which affect any of them,

in accordance with Article 11. They shall also be involved in the implementation of agreements which affect them and by which they are bound.

2. The Netherlands, Aruba, Curaçao and St Maarten shall conclude a mutual agreement on cooperation between the Countries for the purpose of drafting delegated legislation or other measures necessary for the implementation of agreements with other Powers.
3. If the interests of the Kingdom are affected by the fact that delegated legislation or other measures necessary for the implementation of agreements with other Powers have not been introduced in one of the Countries, while the agreement in question can be ratified for that Country only once the delegated legislation or measures have been introduced, an order in council for the Kingdom, or if necessary a Kingdom Act, may determine the way in which the agreement is to be implemented.
4. Once the delegated legislation or other measures necessary for the implementation of the agreement in question have been introduced by the relevant Country, the order in council for the Kingdom or Kingdom Act shall be repealed.

### **Article 28**

In accordance with international agreements entered into by the Kingdom, Aruba, Curaçao or St Maarten may, if they so desire, accede to membership of international organisations.

...

### **Note:**

The above extracts are taken from an English translation of the Charter of the Kingdom of the Netherlands which has been kindly provided to the editors of this compilation by the Translation Department of the Dutch Ministry of Foreign Affairs. The full text of this unofficial translation may be accessed [here](#).

### 3. Legislative Provisions Related to Treaty Practice

#### **Kingdom Act of 7 July 1994 containing regulations concerning the approval and publication of treaties and publication of decisions of international organisations (Kingdom Act on the Approval and Publication of Treaties)**

Entered into force on 20 August 1994

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all those who shall see or hear these presents! Be it known:

Whereas we have considered that in accordance with article 91, paragraphs 1 and 2 of the Constitution, the cases in which approval of treaties or of the intention to denounce them is not required, and the manner in which approval shall be granted, shall be laid down by Act of Parliament, and that furthermore, amendment of the rules regarding the publication of treaties and decisions of international organisations as referred to in article 95 of the Constitution is desirable, inter alia because of amendments to the Constitution and to the Charter of the Kingdom of the Netherlands;

We, therefore, having heard the Council of State of the Kingdom, in consultation with the States General, and having taken into account the provisions of the Charter of the Kingdom of the Netherlands, have approved and decreed as:

#### **Section 1**

1. Our Minister of Foreign Affairs shall periodically submit to the States General and to the Parliaments of Aruba, Curaçao and St Maarten a list of draft treaties on whose conclusion negotiations are proceeding on behalf of the Kingdom.
2. The list referred to in the preceding subsection shall contain for each draft treaty:
  - a. the purport of the treaty;
  - b. the future contracting parties who are involved in negotiations;
  - c. where necessary, the international organisation under whose auspices the negotiations are being conducted;

- d. the ministries concerned.
3. The list referred to in subsection 1 shall not include draft treaties in respect of which the interests of the Kingdom dictate that the fact that negotiations are proceeding may not be made public.
4. In the situation referred to in subsection 3, the information referred to in subsections 1 and 2 may be submitted confidentially.

## **Section 2**

1. Treaties by which the government considers it desirable for the Kingdom to be bound shall be submitted as soon as possible to the States General for approval.
2. They shall at the same time be submitted to the Parliaments of Aruba, Curaçao and St Maarten, if the treaties concerned relate to Aruba, Curaçao or St Maarten.

## **Section 3**

Approval may be tacit or express.

## **Section 4**

Express approval shall be granted by Act of Parliament.

## **Section 5**

1. Tacit approval shall be granted, if within thirty days of the treaty in question being submitted to the States General, the wish has not been expressed by or on behalf of one of the Houses or at least a fifth of the number of members laid down in the Constitution of one of the Houses that the treaty be subject to express approval.
2. The Minister Plenipotentiary for Aruba, Curaçao or St Maarten respectively may express the same wish within the same time-limit if the treaty concerns Aruba, Curaçao or St Maarten.
3. If the wish referred to in subsection 1 or 2 is expressed, a Bill for approval shall be introduced as soon as possible.

**Section 6**

1. If a treaty contains provisions which conflict with the Constitution or result in such conflict, it shall be submitted for express approval.
2. A Bill for approval of such a treaty shall state that approval is granted having regard to the provisions of article 91, paragraph 3 of the Constitution.

**Section 7**

Unless a treaty contains provisions which conflict with the Constitution or result in such conflict, approval shall not be required:

- a. if this is laid down by Act of Parliament for such treaties;
- b. if the treaty is solely concerned with the implementation of an approved treaty, without prejudice to the provisions of section 8, subsection 2;
- c. if the treaty involves no substantial financial obligations for the Kingdom and has been concluded for a period not exceeding one year;
- d. if in exceptional circumstances of a compelling nature the interests of the Kingdom dictate that the treaty should remain secret or confidential;
- e. if the purpose of the treaty is to extend a treaty which is about to expire, without prejudice to the provisions of section 9, subsection 2;
- f. if the purpose of the treaty is to amend an annexe which is an integral part of an approved treaty and whose contents aim to implement the provisions of the approved treaty of which it is an annexe, unless a reservation on this subject has been made in the Act of Parliament approving the treaty.

**Section 8**

1. If the government proposes to conclude a treaty which solely concerns the implementation of an approved treaty, it shall notify the States General of this in writing, and, if the implementing treaty is to apply to Aruba, Curaçao or St Maarten, shall notify the Parliaments of Aruba, Curaçao and St Maarten.
2. If within thirty days of the notification referred to in subsection 1 the wish that the implementing treaty be submitted for the approval of the States General is expressed by or on behalf of one of the Houses or at least one fifth

of the number of members laid down by the Constitution of one of the Houses, or by the Minister Plenipotentiary for Aruba, Curaçao or St Maarten respectively, the approval of the States General shall be required, notwithstanding the provisions of section 7 (b).

### **Section 9**

1. If the government proposes to extend a treaty which is about to expire, it shall notify the States General of this in writing, and, if the treaty applies to Aruba, Curaçao or St Maarten, shall notify the Parliament of Aruba, Curaçao or St Maarten respectively.
2. If within thirty days of the notification referred to in subsection 1 the wish that the treaty extending the said treaty be submitted for the approval of the States General is expressed by one of the Houses or one fifth of the number of members laid down by the Constitution of one of the Houses, or by the Minister Plenipotentiary for Aruba, Curaçao or St Maarten respectively, the approval of the States General shall be required, notwithstanding the provisions of section 7 (e).
3. If the government proposes not to extend a treaty which is about to expire although one or more of the parties to the treaty so desire, it shall notify the States General of this in writing, and if the treaty applies to Aruba, Curaçao or St Maarten, it shall notify the Parliament of Aruba, Curaçao or St Maarten respectively.

### **Section 10**

1. A treaty that does not contain provisions which conflict with the Constitution or result in such conflict may become immediately binding if in exceptional circumstances of a compelling nature the interests of the Kingdom dictate that the Kingdom be bound by that treaty before it is submitted to the States General for approval. In such cases, the treaty shall subsequently be submitted to the States General for approval as soon as possible.
2. Such a treaty shall be entered into with the reservation that it will be terminated should approval be withheld.

**Section 11**

1. If pursuant to section 7 (d) the Kingdom becomes bound by a treaty without the approval of the States General, such a treaty shall be submitted to the States General for approval as soon as it no longer has to remain secret or confidential.
2. Such a treaty shall be concluded only if it contains a provision which allows for termination by the Kingdom within a reasonable period of time, unless the interests of the Kingdom expressly conflict with this.

**Section 12**

If in the cases referred to in sections 10 and 11 approval is withheld, the treaty shall be terminated as soon as is legally possible.

**Section 13**

1. The States General shall be notified as soon as possible of treaties which, pursuant to the provisions of section 7, require no approval and by which the Kingdom is bound, and treaties by which, pursuant to the provisions of section 10, subsection 1, the Kingdom is bound before they have been approved by the States General.
2. At the same time, the Parliament of Aruba, Curaçao or St Maarten shall be notified, if the treaties concern Aruba, Curaçao or St Maarten.
3. Notification of treaties of a secret or confidential nature shall take place subject to conditions of secrecy unless the interests of the Kingdom dictate that notification shall not take place.
4. If a treaty is approved by the States General and the government decides against the Kingdom being bound by that treaty, the government shall inform the States General of its decision immediately; at the same time it shall inform the Parliament of Aruba, Curaçao or St Maarten if the treaty concerns Aruba, Curaçao or St Maarten.

**Section 14**

1. The provisions of sections 2, 3, 4, 5, 6, 7 (a) and 7 (b), 10, subsection 1 and 13 shall apply mutatis mutandis to plans to denounce treaties.

2. If pursuant to section 10, subsection 1, a treaty has been denounced without the prior approval of the States General, and the States General subsequently withhold their approval, the denunciation, or the consequences thereof, shall be reversed as soon as legally possible.

### **Section 15**

1. Except in the case of a treaty which conflicts with the Constitution or results in such conflict, the government may, if the interests of the Kingdom so require, have the treaty apply provisionally to the Kingdom pending its entry into force.
2. If a treaty requiring the approval of the States General before it can enter into force contains provisions which conflict with statute law or result in such conflict, such provisions may not be applied provisionally.
3. If a treaty contains provisions whose content in the opinion of the government may be binding on all persons, and the government wishes to have the said provisions provisionally applied, the text of the treaty and the fact that it is to be provisionally applied shall be published before the provisional application takes effect.
4. If a treaty is to be provisionally applied, the States General shall be notified of this without delay. At the same time, the Parliament of Aruba, Curaçao or St Maarten shall be informed if the treaty concerns Aruba, Curaçao or St Maarten.

### **Section 16**

1. Treaties and decisions of international organisations shall be published in the Treaty Series of the Kingdom of the Netherlands.
2. Our Minister of Foreign Affairs is responsible for publication of the Treaty Series.
3. The Treaty Series shall be published electronically in a generally accessible manner.
4. After publication, the Treaty Series shall remain available electronically in a generally accessible manner.



5. No charge shall be made for accessing the Treaty Series.
6. Further rules concerning the publication and availability of the Treaty Series shall be laid down by ministerial order.

#### **Section 16a**

If electronic publication of the Treaty Series in the manner provided for by section 16 is wholly or partially impossible, Our Minister of Foreign Affairs shall ensure that it is published in some other way in accordance with rules to be laid down by ministerial order.

#### **Section 16b**

1. A hard copy of the Treaty Series shall be provided to anyone on request, the maximum charge being equal to the cost of making the copy.
2. Our Minister of Foreign Affairs shall designate a location where copies may be obtained.

#### **Section 16c [Date of entry into force yet to be decided]**

1. The texts and any Dutch translations of the treaties and decisions of international organisations published pursuant to this Act shall be available to everybody in consolidated form by means of a generally accessible electronic medium designated by ministerial order.
2. Categories of treaties and of decisions of international organisations to which subsection 1 does not apply may be designated by ministerial order.
3. A consolidated text of a treaty or of a decision of an international organisation that has been made available under subsection 1 shall remain available if the treaty or decision is amended, becomes inoperative or is withdrawn after being made available.

#### **Section 17**

The Treaty Series shall publish:

- a. the text of the treaty or decision in one or more languages;

- b. the date of its entry into force, either for the Kingdom as a whole, or for one or more of the countries that make up the Kingdom;
- c. the date of its expiry, either for the Kingdom as a whole, or for one or more of the countries which make up the Kingdom;
- d. whether the treaty is to be provisionally applied as referred to in section 15.

### **Section 18**

The Treaty Series may also contain:

- a. a Dutch translation of the treaty or decision;
- b. information concerning parliamentary approval;
- c. information concerning the date of its entry into force for other states or for international organisations;
- d. information concerning the date of its expiry for other states or for international organisations;
- e. other particulars.

### **Section 19**

1. Treaties and decisions of international organisations shall be deemed to have been published in the entire Kingdom as of the first day of the second calendar month after the date of publication of the issue of the Treaty Series in which they appear.
2. Our Minister of Foreign Affairs may in certain cases amend this time limit, either for the Kingdom as a whole or for one or more of the countries making up the Kingdom, by publishing a statement to that effect in the Treaty Series.

### **Section 20**

1. Notification of treaties or decisions of international organisations by Our Minister of Foreign Affairs to certain persons shall for them be the equivalent of publication, provided a statement to that effect accompanies the notification.

2. Sections 16, subsection 1, 17 (a), (b) and (c), and 19 of this Act shall not apply to treaties and decisions of international organisations whose publication is regulated in or pursuant to a treaty published in the Treaty Series.
3. In exceptional cases Our Minister of Foreign Affairs may determine that annexes to a treaty or decisions of international organisations shall be published by being made available for public inspection rather than in the Treaty Series. A statement to this effect shall be published in the Treaty Series.

### **Section 21**

The Kingdom Act of 22 June 1961 (Bulletin of Acts and Decrees 207) containing regulations relating to the publication of international agreements and of the decisions of international organisations is hereby repealed.

### **Section 22**

This Act shall enter into force on the thirtieth day after the date of its publication in the Bulletin of Acts and Decrees.

### **Section 23**

This Act may be cited as the Kingdom Act on the Approval and Publication of Treaties.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees of the Netherlands, in the Official Bulletin of the Netherlands Antilles and in that of Aruba, and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at The Hague, 7 July 1994

Beatrix

P.H. Kooijmans

Minister of Foreign Affairs

D.I.W. de Graaff-Nauta

Minister of the Interior

Minister for Netherlands Antilles and Aruban Affairs

R.F.M. Lubbers

Published on the twenty-first of July 1994

A. Kosto

Minister of Justice

**Note:**

This unofficial English translation of the Kingdom Act was prepared by the Translation Department of the Ministry of Foreign Affairs and has been kindly provided to the editors of this compilation. The official Dutch language version is provided by the Ministry of the Interior and Kingdom relations at: [http://wetten.overheid.nl/BWBR0006799/geldigheidsdatum\\_24-11-2011](http://wetten.overheid.nl/BWBR0006799/geldigheidsdatum_24-11-2011)

#### 4. Other Documentation

##### **A Instructions for Legislation (*Aanwijzingen voor de Regelgeving, 2011*)**

This document is established by decree of the Prime Minister, is amended regularly and is available only electronically, in Dutch. It contains drafting directions for all civil servants who deal with the drafting of rules at the State level. There is a chapter on treaties with models for correspondence between Government, Head of State, Council of State and Parliament. As for treaties, the drafting directions are applicable only to the ‘Explanatory Reports’ which accompany a treaty awaiting approval.

##### **B Handbook for Legislation (*Draaiboek voor de wetgeving, 2011*)**

This document is issued by the Ministry of Justice, is amended regularly and is available only electronically, in Dutch. It provides a detailed description of all procedures for the Council of Ministers, Council of State and Parliament leading to the approval of a Bill. There is a chapter on treaties, which describes some exceptions and additions to these procedures.

##### **C Handbook for the Ministry of Foreign Affairs (*Handboek Buitenlandse Zaken, 2011*)**

This document is approved by the Secretary-General of the Foreign Ministry, is amended regularly and is available only electronically, in Dutch. It contains practical guidelines on policy matters. There is a section on legal affairs and treaties which explains terms and refers back to the Legal Service and the Treaties Division.

##### **D The Rules of Procedure of the Council of Ministers (*Reglement van Orde van de Ministerraad, 2011*)**

These rules define treaty-making as an element of general government policy, thus defining it as within the competence of the Cabinet. It is stated in the Rules

that all legislative texts which are to be sent to Parliament for their approval have to be brought first before the Council of Ministers. This requirement applies to treaties which require parliamentary approval. The rules do not require treaties that do not require parliamentary approval to be brought before the Council of Ministers.

**Note:**

English translations of the above four items are not currently available. Information about their contents has been kindly provided for the purposes of this project by Gerard Limburg, former Director of Treaties, Ministry of Foreign Affairs, the Netherlands.

## **5. Official online sources of national treaty status information**

General information on treaties and information on specific treaties is available on the website of the Netherlands Ministry of Foreign Affairs, including in English, at: <http://www.minbuza.nl/en/key-topics/treaties>