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**ARTICLE 102**

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## ARTICLE 102

### TEXT OF ARTICLE 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

### INTRODUCTORY NOTE

1. The organization of the present study follows that of the corresponding study in Volume VI, Supplement 8 of the *Repertory*. Decisions or actions taken by the United Nations Organs during the period under review are mentioned briefly in the General Survey and discussed in more detail in the Analytical Summary of Practice. Those headings and subheadings in the Analytical Summary of Practice that do not call for comments on account of the lack of new material have been identified by asterisks (\*\*). The annex to the General Survey gives information about further developments in the practice regarding the application of the *Regulations to give effect to Article 102*<sup>1</sup> (hereinafter “the Regulations”), as well as the excerpts from the text of the said Regulations.

### I. GENERAL SURVEY

2. During the period under review, the United Nations Organs did not take any decisions bearing on the application of Article 102. However, in its resolutions 50/44 of 11 December 1995, 51/158 of 16 December 1996, 52/152 and 52/153 of 15 December 1997 and 53/100 of 8 December 1998 the General Assembly endorsed the various measures taken by the Treaty Section with a view to disseminating treaty-related information electronically and expediting the publication of treaties, including the establishment of a comprehensive database for treaty related actions and advanced workflow system, the placing of the *Multilateral Treaties Deposited with the Secretary General* and the United Nations *Treaty Series* on the Internet (hereinafter “the United Nations Treaty Collection on the Internet (UNTC)”). Consistent with the expressed wishes of the Member States<sup>2</sup>, the Treaty Section provided online access to the publication *Multilateral Treaties Deposited with the Secretary General* in November 1995 and to the United Nations *Treaty Series* in June 1997. To expedite the registration and publication of treaties, the Permanent Representatives to the United Nations and Heads of international organizations<sup>3</sup> were reminded in 1996 and 1997 via notes verbales by the Legal Counsel of the registration and publication requirements and the continued need for translations and submission of treaties for registration in electronic format. By its resolution 52/153 of 15 December 1997, the General Assembly extended the limited publication policy to multilateral treaties which granted the Secretariat a discretion not to publish *in extenso* bilateral and multilateral treaties or agreements falling within one of the categories listed under article 12, paragraph 2 (a) to (c) of the Regulations.

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<sup>1</sup> GA resolution 97 (I), as amended by GA resolutions 364 B (IV), 482 (V) and 33/141; for the complete text, see United Nations *Treaty Series*, vol. 859/860 (1973), p. VIII to XX.

<sup>2</sup> GA resolutions 50/44 of 11 December 1995 and 51/158 of 16 December 1996.

<sup>3</sup> LA/41/TR/230 of 22 April 1996 and 2 April 1997 (<http://untreaty.un.org/English/NV/NV.asp>).

Furthermore, during the period under review, a study was conducted to evaluate the economic and practical feasibility of providing the Internet access to the UNTC without being charged a user-fee. In light of the high costs involved in placing the UNTC on-line and in maintaining and updating the service, the Secretariat gave consideration to charging a user fee from certain users with a view to raising some revenue which would offset part of the costs. The Secretary-General in his note of 26 September 1997 to the General Assembly in connection with the United Nations Decade of International Law endorsed such approach and, in conclusion, reported that: “a) the on-line versions of the Multilateral Treaties Deposited with the Secretary-General and the United Nations Treaty Series involve high costs and additional costs which result from the need to maintain, update and improve the service; b) the revenues generated from hard copy sales are inadequate to cover these costs and will increase as a result of their on-line availability; c) accordingly, it will be appropriate to charge a fee from users of the on-line version to generate revenues to fund at least the maintenance and improvement of the service.”<sup>4</sup>

3. The following table shows the number of international agreements and related treaty actions registered, or filed and recorded by the Secretariat, from 1 January 1995 until 31 December 1999<sup>5</sup>:

**Number of international agreements and related treaty actions**

<i>Submitting Party</i>	<i>Treaties</i>		<i>Treaty actions</i>		<i>Total</i>
	<i>Registered</i>	<i>Filed and Recorded</i>	<i>Registered</i>	<i>Filed and Recorded</i>	
States	3 725	6			3 731
Specialized agencies and IAEA	1 624	57			1 681
Ex officio	593	-			593
By the Secretariat	-	42			42
Intergovernmental organizations	139	19			158
			10 679	17	10 789
	<b>TOTAL</b>				<b>16 994<sup>6</sup></b>

<sup>4</sup> Note by the Secretary-General A/52/363 of 26 September 1997.

<sup>5</sup> For data up to 31 December 1954, see *Repertory*, vol. V, under Article 102, para. 16; for data from 1 January 1955 to 31 December 1956, see *Repertory, Supplement No. 1*, vol. II, under Article 102, para. 9; for data from 1 January 1957 to 31 December 1959, see *Repertory, Supplement No. 2*, vol. III, under Article 102, para. 2; for data from 1 January 1960 to 31 December 1966, see *Repertory, Supplement No. 3*, vol. IV, under Article 102, para. 5; for data from 1 January 1967 to 31 December 1969, see *Repertory, Supplement No. 4*, vol. II, under Article 102, para. 5; for data from 1 January 1970 to 31 December 1978, see *Repertory, Supplement No. 5*, vol. V, under Article 102, para. 3; for data from 1 January 1979 to 31 December 1984, see *Repertory, Supplement No. 6*, vol. VI, under Article 102, para. 3; for data from 1 January 1985 to 31 December 1988, see *Repertory, Supplement No. 7*, vol. VI, under Article 102, para. 5 and for data from 1 January 1989 to 31 December 1994, see *Repertory, Supplement No. 8*, vol. VI, under Article 102, para. 3.

<sup>6</sup> This brought to 77, 994 the number of treaties and related treaty actions registered or filed and recorded with the Secretariat from December 1946, when effective registration and filing and recording started, up to 31 December 1999.

4. From 1 January 1995 to 31 December 1999, 233 volumes of the United Nations *Treaty Series*<sup>7</sup> were published, bringing to 1, 691 the total numbers of volumes published as of 31 December 1999. In parallel, 1, 568 volumes of the United Nations *Treaty Series* were placed for searches on the Internet.

## ANNEX

### **Registration and publication of treaties and international agreements: Regulations to give effect to Article 102 of the Charter of the United Nations**

#### *Article 4*

1. Every treaty or international agreement subject to article 1 of these regulations shall be registered *ex officio* by the United Nations in the following cases:

- (a) Where the United Nations is a party to the treaty or agreement;
- (b) Where the United Nations has been authorized by the treaty or agreement to effect registration;
- (c) Where the United Nations is the depository of a multilateral treaty or agreement.

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## NOTES

(a) During the period under review, the question arose whether a bilateral treaty between the United Nations on behalf of a population without effective political representation and a Member State should be registered pursuant to Article 102 and if so, by which party.

(b) The issue arose in connection with the GAP Treaty,<sup>8</sup> an instrument concluded between Australia and Indonesia designed to enable the parties to share in the exploration for and exploitation of petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia for mutual benefit of their population. Indonesia relinquished its interest under the GAP Treaty on 19 October 1999.<sup>9</sup> The transitional administrative authority in East Timor was transferred to UNTAET.<sup>10</sup>

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<sup>7</sup> See *Yearbook* of the United Nations, vol. 49 (1995), p. 1332; Ibid., vol. 50 (1996), p. 1214; Ibid., vol. 51 (1997), p. 1353; Ibid., vol. 52 (1998), p. 1223; Ibid., vol. 53 (1999), p. 1242.

<sup>8</sup> See AUSTRALIA AND INDONESIA: Treaty on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (with annexes). Signed over the zone of cooperation, above the Timor Sea on 11 December 1989. Came into force on 9 February 1991. Registered by Australia on 6 November 1991, UNTS, vol. 1654, p. 105.

<sup>9</sup> On 19 October 1999 the Indonesian People's Consultative Assembly formally recognized the result of consultations held on 28 September 1999 between Indonesia, Portugal and the UN which reiterated their agreement for transfer of authority in East Timor to the UN.

<sup>10</sup> United Nations Transitional Administration in East Timor (UNTAET) was established pursuant to SC resolution 1272 (1999) on 25 October 1999.

(c) In view of Security Council resolution 1272 (1999) establishing the UNTAET, the general thrust of Article 76 of the Charter of the United Nations, and the relevant provisions of the Regulations,<sup>11</sup> it was decided to pursue the *ex officio* registration and publication of the arrangement reflected in the Memorandum of Understanding and the Exchange of Notes between UNTAET and Australia.<sup>12</sup>

## Article 12

1. The Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered or filed and recorded, in the original language or languages, followed by a translation in English and in French. The certified statements referred to in article 2 of these regulations shall be published in the same manner.

2. The Secretariat will, however, have the option not to publish *in extenso* a bilateral treaty or international agreement belonging to one of the following categories:

(a) Assistance and co-operation agreements of limited scope concerning financial, commercial, administrative or technical matters;

(b) Agreements relating to the organization of conferences, seminars or meetings;

(c) Agreements that are to be published otherwise than in the series mentioned in paragraph 1 of this article by the United Nations Secretariat or by a specialized or related agency.

3. In deciding whether or not to publish *in extenso* a treaty or international agreement belonging to one of the categories mentioned in paragraph 2 of this article, the Secretariat shall duly take into account, *inter alia*, the practical value that might accrue from *in extenso* publication. Treaties and international agreements that the Secretariat intends not to publish *in extenso* shall be identified as such in the monthly statements of treaties and international agreements provided for in article 13 of these Regulations, it being understood that a decision not to publish *in extenso* may be reversed at any time.

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## NOTES

(a) Pursuant to article 12 of the Regulations, treaties and international agreements registered or filed and recorded are published in the United Nations *Treaties Series* (hereinafter “the UNTS”) in their authentic language(s) together with a translation into English and French, as required. The General Assembly, in its resolution 52/153 of 15 December 1997, has invited the Secretary-General to apply the provisions of article 12, paragraph 2, of the Regulations to multilateral treaties falling within the terms of article 12, paragraph 2 (a) to (c) of the Regulations. Accordingly and also given the financial constraints under which the Secretariat operated and the limitations of its publication budget, the option not to publish *in extenso* was further extended to some multilateral agreements containing lengthy annexes or lists of products/specimens which were of a highly technical nature. Agreements submitted by the EC presented a particular

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<sup>11</sup> See “Registration and Publication of Treaties and International Agreements: Regulations to give effect to Article 102 of the Charter of the United Nations” (as amended), UNTS, vol. 859/860, p. VIII.

<sup>12</sup> See UNTS, vol. 2105, p. 179; UNTS, vol. 2066, p. 146.

difficulty for publication as such agreements were authentic in nine languages (i.e., the official languages of the EC). The following approach was adopted to address such concerns:

a). Where agreements (whether bilateral or multilateral) fell within the terms of article 12, paragraph 2, of the Regulations, (e.g., Agreement for the conclusion of negotiations between the European Community and New Zealand under article XXIV:6 of the GATT concluded on 30 May 1996, UNTS vol. 1938, I:33245), the option not to publish *in extenso* the text of the agreements or annexes would be exercised, as appropriate;

b). Where agreements (whether bilateral or multilateral) did not fall within the terms of article 12, paragraph 2, of the Regulations, (e.g., Agreement on trade and commercial and economic co-operation between the EC and Lithuania registered by the UN Secretariat on 11 December 1996 (UNTS vol.1950, I:33410), and in general agreements establishing association between the EC, its member states and a third party), the Secretariat would limit their publication in the UNTS to the full English and French texts only.

(b) Consistent with this approach, not published in full were the texts of the Marrakesh Agreement establishing the World Trade Organization of 15 April 1994 which were registered with the Secretariat on 1 June 1995 (full publication would have produced 40 volumes, mostly schedules; therefore only the titles of the schedules were reproduced in the UNTS), amendments to the Regulations to the Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of These Prescriptions of 16 October 1995, various agreements on trade in specific products concluded between the EC and other States, agreements on the establishment of trust funds concluded between the UN and various States, memoranda of understanding on the contribution of personnel to the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and other agreements.

(c) In applying the concept of limited publication to the UNTS publication practice, due consideration was given to the fact that in many cases the relevant texts were published *in extenso* in treaty collections other than the UNTS, e.g., by the WTO,<sup>13</sup> Council of Europe,<sup>14</sup> Multilateral Investment Guarantee Agency (MIGA),<sup>15</sup> IAEA,<sup>16</sup> UNECE<sup>17</sup> or by the UN Secretariat in the case of the UN International Tax Agreement Series.<sup>18</sup>

(d) In accordance with article 12, paragraph 3, of the Regulations, those treaties and international agreements that the Secretariat intended not to publish *in extenso* were identified in the monthly *Statement of Treaties and International Agreements registered or filed and recorded with the Secretariat* (hereinafter the “Monthly Statement”) by an asterisk preceding the title.

#### Article 8

1. The register shall be kept in the English and French languages. The register shall comprise in respect of each treaty and international agreement, a record of:

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<sup>13</sup> Law and Practice of the World Trade Organization (K 4600.L38), Legal Texts of the World Trade Organization (<http://www.wto.org>).

<sup>14</sup> European Treaty Series (ETS), Council of Europe Treaty Series (CETS), Council of Europe Treaties website at <http://conventions.coe.int/>.

<sup>15</sup> MIGA Annual Reviews and website at [www.miga.org](http://www.miga.org).

<sup>16</sup> IAEA Information Circulars (“INFCIRC”) and IAEA website at [www.iaea.org](http://www.iaea.org).

<sup>17</sup> UNECE Publications website at [http://www.unece.org/pub\\_cat/topics/trans.htm](http://www.unece.org/pub_cat/topics/trans.htm).

<sup>18</sup> UN International Tax Agreement Series, ST/ESA/SER.C/9suppl.57 (Sales No.96.XVI.1).

...  
(d) The dates of signature, ratification or acceptance, exchange of ratification, accession, and entry into force;  
...

2. Such information shall also be included in the register in regard to the statements registered under article 2 of these regulations.  
...

### *Article 13*

The Secretariat shall publish every month a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month, giving the dates and numbers of registration and recording.

### NOTES

(a) The registration practice to produce the Monthly Statement based on articles 8 and 13 of the Regulations evolved further to also include the method of entry into force of an agreement. During the period under review, the UN Secretariat proceeded to standardize the language for the method of entry into force used for bilateral agreements in the Monthly Statement, the Register and the UNTS in order to speed up the registration process and minimize errors at the data entry stage. In contrast to a past practice when the entire entry into force provision of the agreement was recited, the new standardized language relating to the registration of bilateral agreements and subsequent actions thereto would include one of the four generic methods of entry into force (signature, exchange of notes/letters, ratification and notification), date of entry into force and the related provision. Similarly, the entry into force information provided with respect to multilateral agreements was standardized to include date of entry into force, the related provision and a list of participants and dates of deposit of instruments. The new standardized language for entry into force clauses was developed with the capabilities and the aims of the computerized treaty database in mind which was in process of being created as the precursor to a comprehensive workflow system to register and publish treaties.

## **II. ANALYTICAL SUMMARY OF PRACTICE**

### **A. Registration of treaties and international agreements**

#### **1. REQUIREMENTS FOR REGISTRATION**

##### *a. Scope of the term “treaty and international agreement”*

5. In the absence of a definition of the term “treaty” and “international agreement” in the provisions of Article 102 as well as in the Regulations adopted by the General Assembly to give effect to it, the Secretariat is guided by the provisions of article 2 of the 1969 Vienna Convention on the Law of Treaties and generally defines the term as a written agreement governed by international law entered into by parties with the requisite treaty-making capacity. During the period under review, the Secretariat declined to register an agreement concluded by the IFAD and the State of Bahia (Brazil), an administrative entity not usually considered to be governed by international law for the purpose of entering into treaties. On 19 July 1999, responding to a query

concerning the possibility of registration with the UN Secretariat of the Act to Constitute the Commonwealth of Australia 1900 and the Australia Act 1986, the Secretariat noted that internal domestic legislation was not subject to registration under Article 102 of the Charter of the United Nations.

**\*\*b.** *Entry into force of treaties and international agreements*

**\*\*c.** *Scope of the expression "entered into by any Member of the United Nations"*

## **\*\*2. OBLIGATION TO REGISTER**

### **\*\*B. Treaties and international agreements not subject to registration**

#### **C. Publication of treaties and international agreements**

6. During the period under review, the first steps towards standardization and elimination of duplicative steps in the publishing of the treaties and international agreements were undertaken. Lists of Signatory States of multilateral treaties were compiled and copies were made available for publishing. In addition, such common editorial elements as the Note by the Secretariat were prepared and used across the board for publication purposes. These measures ensured uniformity of presentation and reduced processing costs since these pages no longer required processing for each UNTS volume.

7. In September 1997 the Secretariat commenced work on the implementation of a new treaty database/workflow system with a view to establishing a comprehensive document management and publication process, including the desktop publishing. Being a highly complex and pioneering effort, one of its goals was to incorporate 50 years of treaty-related data in a single repository from which all major publications - UNTS, Monthly Statement, UNTS *Cumulative Index* and *Multilateral Treaties Deposited with the Secretary-General* - could be produced. At the same period, the first steps towards web publishing were undertaken. On 28 November 1995 the publication *Multilateral Treaties Deposited with the Secretary-General* was launched on the Internet for online availability. In June 1997, the first 1, 500 volumes of the UNTS were placed in a searchable format on the Internet. This significantly expanded access to the full texts of treaties, well beyond the reach of 400 paper copies of each volume sold or distributed to libraries across the world each year. Both online publications have become better known as the UN Treaty Collection on the Internet. On 16 December 1996, the General Assembly adopted resolution 51/158 entitled "Electronic Treaty Database" which, *inter alia*, welcomed the range of measures taken by the Secretariat to expedite the publication of the UNTS and to provide electronic access to the publication *Multilateral Treaties Deposited with the Secretary-General* through the Internet, and endorsed the proposed Internet dissemination of the UNTS, following the same rules applicable to the printed version of the publication in addition to the *Multilateral Treaties Deposited with the Secretary-General*.<sup>19</sup> In the same resolution, the General Assembly recognized that Internet access to treaties and treaty-related information was particularly valuable in countries where the cost of maintaining complete collections of treaties in bound volume form was relatively high.

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<sup>19</sup> See GA resolution 51/158 of 16 December 1996.

8. During the period under review, the Secretariat continued to update its publication policy with a view to broaden the scope of application of Article 12, paragraph 2, of the Regulations in order to include a greater number of treaties under the limited publication option. On 15 December 1997, having considered the report of the Sixth Committee (A/52/647), the General Assembly invited the Secretary-General to apply the provisions of article 12, paragraph 2, of the Regulations to multilateral treaties falling within the terms of article 12, paragraph 2 (a) to (c) and also encouraged the Member States to submit the texts of treaties for registration and publication in electronic format and, where available, with translations into English or French or both, as may be needed.<sup>20</sup> To further expedite the treaty registration and publication process, the Legal Counsel circulated on 22 April 1996 and 2 April 1997, respectively, notes verbales specifying the enhanced requirements for submission of treaties for registration and publication in accordance with Article 102 of the Charter of the United Nations. These requirements reflected the need to achieve further advancements in the desktop publishing area and to benefit from the expanded technological capabilities of the Secretariat.

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<sup>20</sup> See GA resolution 52/153 of 15 December 1997.