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## TREATY HANDBOOKS PART III

Codification Division of the United Nations Office of Legal Affairs

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# Treaty Handbook

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Prepared by the Treaty Section of the Office of Legal Affairs



United Nations

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## FOREWORD

In its *Millennium Declaration*, the General Assembly of the United Nations emphasised the need to strengthen the international rule of law and respect for all internationally recognised human rights and fundamental freedoms, thus clearly highlighting a key area of focus for the United Nations in the new millennium.

The Secretary-General of the United Nations has reaffirmed his commitment to advancing the international rule of law. Treaties are the primary source of international law, and the Secretary-General is the main depository of multilateral treaties in the world. At present, over 500 multilateral treaties are deposited with him. In his endeavours to enhance respect for the international rule of law, the Secretary-General has encouraged Member States that have not done so already to become parties to those treaties. The United Nations has undertaken a number of initiatives to assist States to become party to multilateral treaties and thereby contribute to strengthening the international rule of law.

This Handbook, prepared by the Treaty Section of the United Nations Office of Legal Affairs as a practical guide to the depository practice of the Secretary-General and the registration practice of the Secretariat, is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework. It is written in simple language and, with the aid of diagrams and step-by-step instructions, touches upon many aspects of treaty law and practice. This Handbook is designed for use by States, international organizations and other entities. In particular, it is intended to assist States with scarce resources and limited technical proficiency in treaty law and practice to participate fully in the multilateral treaty framework.

In the past, the Treaty Section of the Office of Legal Affairs has received representatives from foreign ministries to provide them with the opportunity to familiarise themselves with the Secretary-General's depository practice and the Secretariat's registration practice. In the future, the Treaty Section hopes to offer this opportunity to other Member State representatives. This Handbook is intended to facilitate such visits and will also be the basis for a pilot training programme that the Treaty Section, Office of Legal Affairs, and the United Nations Institute for Training and Research (UNITAR) will be offering permanent missions: *Deposit of Treaty Actions with the Secretary-General and the Registration of Treaties*.

Of course, aside from paper copies of this Handbook and face-to-face training, there are various resources available on the United Nations web site in relation to the depository and registration practices applied within the United Nations. The web site at <http://untreaty.un.org> contains, among many other things, an electronic copy of this Handbook, a technical assistance site which directs users to relevant UN agencies and the United Nations Treaty Collection which contains the multilateral treaties deposited with the Secretary-General and the United Nations *Treaty Series*.

States are encouraged to make full use of the wealth of information contained in these pages and to contact the Treaty Section of the Office of Legal Affairs by e-mail at [treaty@un.org](mailto:treaty@un.org) with any comments or questions.



Hans Corell  
Under-Secretary-General for Legal Affairs  
The Legal Counsel

## ABBREVIATIONS

This Handbook uses the following abbreviations:

### Regulations

Regulations to give effect to Article 102 of the *Charter of the United Nations*, United Nations *Treaty Series*, volume 859/860, p.VIII (see General Assembly resolution 97(I) of 14 December 1946, as amended by resolutions 364 B (IV) of 1 December 1949; 482 (V) of 12 December 1950; 33/141 of 19 December 1978; and 52/153 of 15 December 1997)

### *Repertory of Practice*

*Repertory of Practice of United Nations Organs* (Volume V, New York, 1955) (see also Supplement No. 1, Volume II; Supplement No. 2, Volume III; Supplement No. 4, Volume II; Supplement No.5, Volume V; and Supplement No. 6, Volume VI)

### Secretary-General

Secretary-General of the United Nations

### *Summary of Practice*

*Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1)

### Treaty Section

Treaty Section, Office of Legal Affairs of the United Nations

### Vienna Convention 1969

*Vienna Convention on the Law of Treaties, 1969*

### Vienna Convention 1986

*Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986*



## 1 INTRODUCTION

In his *Millennium Report* (A/54/2000), the Secretary-General of the United Nations noted that “[s]upport for the rule of law would be enhanced if countries signed and ratified international treaties and conventions”. He further noted that many countries are unable to participate fully in the international treaty framework due to “the lack of the necessary expertise and resources, especially when national legislation is needed to give force to international instruments”. In the same report, the Secretary-General called upon “... all relevant United Nations entities to provide the necessary technical assistance that will make it possible for every willing state to participate fully in the emerging global legal order”.

The Millennium Summit was held at United Nations Headquarters, in New York, from 6 to 8 September 2000. Further to his commitment to the rule of law expressed in the *Millennium Report*, the Secretary-General invited all Heads of State and Government attending the Millennium Summit to sign and ratify treaties deposited with him. The response to the Secretary-General’s invitation was positive. The Treaty Signature/Ratification Event was held during the Millennium Summit and a total of 84 countries, of which 59 were represented at the level of Head of State or Government, undertook 274 treaty actions (signature, ratification, accession, etc.) in relation to over 40 treaties deposited with the Secretary-General.

The Secretary-General is the depositary for over 500 multilateral treaties. The depositary functions relating to multilateral treaties deposited with the Secretary-General are discharged by the Treaty Section of the Office of Legal Affairs of the United Nations. The Section is also responsible for the registration and publication of treaties submitted to the Secretariat pursuant to Article 102 of the *Charter of the United Nations*. Article 102 provides that every treaty and every international agreement entered into by a Member of the United Nations, after entry into force of the Charter, shall be registered with and published by the Secretariat.

Further to the Secretary-General’s commitment to advancing the international rule of law, this Handbook has been prepared as a guide to the Secretary-General’s practice as a depositary of multilateral treaties, and to treaty law and practice in relation to the registration function. This Handbook is mainly designed for the use of Member States, secretariats of international organizations, and others involved in assisting governments on the technical aspects of participation in the multilateral treaties deposited with the Secretary-General, and the registration of treaties with the Secretariat under Article 102. It is intended to promote wider State participation in the multilateral treaty framework.

This Handbook commences with a description of the depositary function, followed by an overview of the steps involved in a State becoming a party to a treaty. The following section highlights the key events of a multilateral treaty, from deposit with the Secretary-General to termination. Section 5 outlines the registration and filing and recording functions of the Secretariat, and how a party may go about submitting a treaty for registration or filing and recording. The final substantive section, section 6, contains practical hints on contacting the Treaty Section on treaty matters, and flow charts for carrying out various common treaty actions. Several annexes appear towards the end of this Handbook, containing various sample instruments for reference in concluding

treaties or performing treaty actions. A glossary listing common terms and phrases of treaty law and practice, many of which are used in this Handbook, is also included.

Treaty law and its practice are highly specialized. Nevertheless, this publication attempts to avoid extensive legal analyses of the more complex areas of the depositary and registration practices. Many of the complexities involving the depositary practice are addressed in the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1). The *Repertory of Practice of United Nations Organs* (volume V, New York, 1955, and Supplements 1-6) is also a valuable guide to the two practices. This Handbook is not intended to replace the *Summary of Practice* or the *Repertory of Practice*.

Readers are encouraged to contact the Treaty Section of the Office of Legal Affairs of the United Nations with questions or comments about this Handbook. This publication may need further elaboration and clarification in certain areas, and the views of readers will be invaluable for future revisions.

Treaty Section  
Office of Legal Affairs  
United Nations  
New York, NY 10017  
USA

Telephone: +1 212 963 5047  
Facsimile: +1 212 963 3693  
E-mail (general): [treaty@un.org](mailto:treaty@un.org)  
(registration): [TreatyRegistration@un.org](mailto:TreatyRegistration@un.org)  
Web site: <http://untreaty.un.org>

## 2 DEPOSITING MULTILATERAL TREATIES

(See the *Summary of Practice*, paras. 9-37.)

### 2.1 Secretary-General as depositary

The Secretary-General of the United Nations, at present, is the depositary for over 500 multilateral treaties. The Secretary-General derives this authority from:

- (a) Article 98 of the *Charter of the United Nations*;
- (b) Provisions of the treaties themselves;
- (c) General Assembly resolution 24(1) of 12 February 1946; and
- (d) League of Nations resolution of 18 April 1946.

### 2.2 Depositary functions of the Secretary-General

The depositary of a treaty is responsible for ensuring the proper execution of all treaty actions relating to that treaty. The depositary's duties are international in character, and the depositary is under an obligation to act impartially in the performance of those duties.

The Secretary-General is guided in the performance of depositary functions by:

- (a) Provisions of the relevant treaty;
- (b) Resolutions of the General Assembly and other United Nations organs;
- (c) Customary international law; and
- (d) Article 77 of the Vienna Convention 1969.

In practice, the Treaty Section of the United Nations Office of Legal Affairs carries out depositary functions on behalf of the Secretary-General.

### 2.3 Designation of depositary

(See section 6.5, which explains how to arrange with the Treaty Section for deposit of a multilateral treaty with the Secretary-General.)

The negotiating parties to a multilateral treaty may designate the depositary for that treaty either in the treaty itself or in some other manner, e.g., through a separate decision adopted by the negotiating parties. When a treaty is adopted within the framework of the United Nations or at a conference convened by the United Nations, the treaty normally includes a provision designating the Secretary-General as the depositary for that treaty. If a multilateral treaty has not been adopted within the framework of an international organization or at a conference convened by such an organization, it is customary for the treaty to be deposited with the State that hosted the negotiating conference.

When a treaty is not adopted within the framework of the United Nations or at a conference convened by the United Nations, it is necessary for parties to seek the concurrence of the Secretary-General to be the depositary for the treaty before designating the Secretary-General as such. In view of the nature of the Secretary-General's role, being both political and legal, the Secretary-General gives careful consideration to the request. In general, the Secretary-General's policy is to assume depositary functions only for:

- (a) Multilateral treaties of worldwide interest adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations that are open to wide participation; and
- (b) Regional treaties adopted within the framework of the regional commissions of the United Nations that are open to participation by the entire membership of the relevant commissions.

Since final clauses are critical in providing guidance to the depositary and in discharging the depositary function effectively, it is important that the depositary be consulted in drafting them. Unclear final clauses may create difficulties in interpretation and implementation both for States parties and for the depositary.



### 3 PARTICIPATING IN MULTILATERAL TREATIES<sup>1</sup>

#### 3.1 Signature

##### 3.1.1 Introduction

(See section 6.2, which illustrates how to arrange with the Treaty Section to sign a multilateral treaty.)

One of the most commonly used steps in the process of becoming party to a treaty is signing that treaty. Multilateral treaties contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc. Such treaties also list the methods by which a signatory State can become party to them, e.g., by ratification, acceptance, approval or accession.

##### 3.1.2 Open for signature

(See the *Summary of Practice*, paras. 116-119.)

Multilateral treaties often provide that they will be open for signature only until a specified date, after which signature will no longer be possible. Once a treaty is closed for signature, a State may generally become a party to it by means of accession. Some multilateral treaties are open for signature indefinitely. Most multilateral treaties on human rights issues fall into this category, e.g., the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; *International Covenant on Civil and Political Rights, 1966*; and *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*.

Generally, multilateral treaties deposited with the Secretary-General of the United Nations make provision for signature by all States Members of the United Nations, or of the specialized agencies, or of the International Atomic Energy Agency, or parties to the *Statute of the International Court of Justice*. However, some multilateral treaties contain specific limitations on participation due to circumstances specific to them. For example:

- Article 2 of the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, 1998*, limits participation to “[c]ountries that are members of the Economic Commission for Europe (UN/ECE), regional economic integration organizations that are set up by ECE member countries and countries that are admitted to the ECE in a consultative capacity”.

##### 3.1.3 Simple signature

Multilateral treaties usually provide for signature subject to ratification, acceptance or approval – also called simple signature. In such cases, a signing State does not undertake positive legal obligations under the treaty upon signature. However, signature indicates the State’s intention to take steps to express its consent to be bound by the treaty 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 treaty (see article 18 of the Vienna Convention 1969).

See, e.g., article 125(2) of the *Rome Statute of the International Criminal Court, 1998*: “This Statute is subject to ratification, acceptance or approval by signatory States. . . .”

##### 3.1.4 Definitive signature

Some treaties provide that States can express their consent to be legally bound solely upon signature. This method is most commonly used in bilateral treaties and rarely used for multilateral treaties. In the latter case, the entry into force provision of the treaty expressly provides that the treaty will enter into force upon signature by a given number of States.

Of the treaties deposited with the Secretary-General, this method is most commonly used in certain treaties negotiated under the auspices of the Economic Commission for Europe, e.g., article 4(3) of the *Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, 1997*:

Countries under paragraphs 1 and 2 of this Article may become Contracting Parties to the Agreement:

- By signing it without reservation to a ratification;
- By ratifying it after signing it subject to ratification;
- By acceding to it.

#### 3.2 Full powers

(See the *Summary of Practice*, paras. 101-115.)

##### 3.2.1 Signature of a treaty without an instrument of full powers

(See section 6.2, which details how to arrange with the Treaty Section to sign a treaty.)

The Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty or undertake any other treaty action on behalf of the State without an instrument of full powers.

##### 3.2.2 Requirement of instrument of full powers

A person other than the Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty only if that person possesses a valid instrument of full powers. This instrument empowers the specified representative to undertake given treaty actions. This is a legal requirement reflected in article 7 of the Vienna Convention 1969. It is designed to protect the interests of all States parties to a treaty as well as the integrity of the depositary. Typically, full powers are issued for the signature of a specified treaty.

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.

<sup>1</sup> For the sake of editorial convenience, the term “State”, as used in this Handbook, may include other entities competent at international law to enter into treaties.

### 3.2.3 Form of instrument of full powers

(See the model instrument of full powers in annex 3.)

As depositary, the Secretary-General insists on proper full powers for the person (other than a Head of State, Head of Government or Minister for Foreign Affairs) seeking to sign a treaty. Documents not containing a legible signature from one of the above-mentioned authorities are not acceptable (e.g., a telexed message). Signature of a treaty without proper full powers is not acceptable.

There is no specific form for an instrument of full powers, but it must include the following information:

1. The instrument of full powers must be **signed** by one of the three above-mentioned authorities and must unambiguously empower a specified person to sign the treaty. Full powers may also be issued by a person exercising the power of one of the above-mentioned three authorities of State *ad interim*. This should be stated clearly on the instrument.
2. Full powers are usually limited to one specific treaty and must indicate the **title of the treaty**. If the title of the treaty is not yet agreed, the full powers must indicate the subject matter and the name of the conference or the international organization where the negotiations are taking place.
3. Full powers must state the **full name and title of the representative** authorised to sign. They are individual and cannot be transferred to the “permanent representative ...”. Due to the individual character of the full powers, it is prudent to name at least two representatives, in case one is hindered by some unforeseen circumstance from performing the designated act.
4. **Date and place of signature** must be indicated.
5. **Official seal**. This is optional and it cannot replace the signature of one of the three authorities of State.

(See Note Verbale from the Legal Counsel of the United Nations of 30 September 1998, LA 41 TR/221/1 (extracted in annex 1)).

The following is an example of an instrument of full powers:

- I have the honour to inform you that I (name), President of the Republic of (name of State), have given full powers to the Honourable Ms (name), Secretary of State for the Interior and Religious Affairs, to sign on behalf of (name of State) the United Nations Convention against Transnational Organized Crime and the following two Protocols to be opened for signature in Palermo, Italy, from 12th to 15th December 2000:
- i. Protocol against the smuggling of migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.
  - ii. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.

This note constitutes the full powers empowering the Honourable (name) to sign the above-stated Convention and Protocols.

The Hon. (name), President of the Republic of (name of State)

[Signature]

Full powers are legally distinct from credentials, which authorise representatives of a State to participate in a conference and sign the Final Act of the conference.

### 3.2.4 Appointment with the depositary for affixing signature

(See section 6.2, which details how to arrange with the Treaty Section to sign a multilateral treaty and to have an instrument of full powers reviewed.)

As custodian of the original version of the treaty, the depositary verifies all full powers prior to signature. If the Secretary-General of the United Nations is the depositary for the treaty in question, the State wishing to sign the treaty should make an appointment for signature with the Treaty Section and submit to the Treaty Section for verification a copy of the instrument of full powers well in advance of signature (facsimiles are acceptable for this purpose). The State should present the original instrument of full powers at the time of signature. Full powers may be submitted by hand or mail to the Treaty Section.

## 3.3 Consent to be bound

(See the *Summary of Practice*, paras. 120-143.)

### 3.3.1 Introduction

(See section 6.3, which details how to arrange with the Treaty Section to ratify, accept, approve or accede to a treaty.)

In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways, as discussed below, are:

- (a) Definitive signature (see section 3.1.4);
- (b) Ratification;
- (c) Acceptance or approval; and
- (d) Accession.

The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty’s entry into force (see section 4.2). Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a treaty through definitive signature or the deposit of an instrument of ratification, acceptance, approval or accession. Entry into force of a treaty with regard to a State is the moment the treaty becomes legally binding for the State that is party to the treaty. Each treaty contains provisions dealing with both aspects.

### 3.3.2 Ratification

Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the

international level. Once a State has ratified a treaty at the international level, it must give effect to the treaty domestically. This is the responsibility of the State. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon ratification, the State becomes legally bound under the treaty.

Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally. Ratification at the national level is inadequate to establish a State's intention to be legally bound at the international level. The required actions at the international level shall also be undertaken.

Some multilateral treaties impose specific limitations or conditions on ratification. For example, when a State deposits with the Secretary-General an instrument of ratification, acceptance or approval of, or accession to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, it must at the same time notify the Secretary-General of its consent to be bound by any two or more of the protocols related to the Convention. The relevant protocols are: Protocols I, II and III of 10 October 1980; Protocol IV of 13 October 1995; and Protocol II, as amended, of 3 May 1996. Any State that expresses its consent to be bound by Protocol II after the amended Protocol II entered into force on 3 December 1998 is considered to have consented to be bound by Protocol II, as amended, unless it expresses a contrary intention. Such a State is also considered to have consented to be bound by the unamended Protocol II in relation to any State that is not bound by Protocol II, as amended, pursuant to article 40 of the Vienna Convention 1969.

### 3.3.3 Acceptance or approval

Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise (see article 14(2) of the Vienna Convention 1969). If the treaty provides for acceptance or approval without prior signature, such acceptance or approval is treated as an accession, and the rules relating to accession would apply.

Certain treaties deposited with the Secretary-General permit acceptance or approval with prior signature, e.g., the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980, and the Food Aid Convention, 1999. The European Union uses the mechanism of acceptance or approval frequently (depository notification C.N.514.2000.TREATIES-6):

[T]he Convention entered into force on 1 July 1999 among the Governments and the intergovernmental organisation which, by 30 June 1999 had deposited their instruments of ratification, acceptance, approval or accession, or provisional application of the Convention, including the European Community. ...

### 3.3.4 Accession

A State may generally express its consent to be bound by a treaty by depositing an instrument of accession with the depositary (see article 15 of the Vienna Convention 1969). Accession has the same legal effect as ratification. However, unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession. The Secretary-General, as depositary, has tended to treat instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned have been advised accordingly.

Most multilateral treaties today provide for accession as, for example, article 16 of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*. Some treaties provide for States to accede even before the treaty enters into force. Thus, many environmental treaties are open for accession from the day after the treaty closes for signature, as, for example, article 24(1) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*.

### 3.3.5 Practical considerations

Form of instrument of ratification, acceptance, approval or accession  
(See the model instrument of ratification, acceptance or approval in annex 4 and the model instrument of accession in annex 5.)

When a State wishes to ratify, accept, approve or accede to a treaty, it must execute an instrument of ratification, acceptance, approval or accession, signed by one of three specified authorities, namely the Head of State, Head of Government or Minister for Foreign Affairs. There is no mandated form for the instrument, but it must include the following:

1. Title, date and place of conclusion of the treaty concerned;
2. Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities;
3. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
4. Date and place where the instrument was issued; and
5. Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.

### Delivery to the Secretary-General

An instrument of ratification, acceptance, approval or accession becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations



Headquarters in New York. The date of deposit is normally recorded as that on which the instrument is received at Headquarters.

States are advised to deliver such instruments to the Treaty Section of the United Nations directly to ensure the action is promptly processed. The individual who delivers the instrument of ratification does not require full powers. In addition to delivery by hand, instruments may also be mailed or faxed to the Treaty Section. If a State initially faxes an instrument, it must also provide the original as soon as possible thereafter to the Treaty Section.

#### Translations

It is recommended that, where feasible, States provide courtesy translations in English and/or French of instruments in other languages submitted for deposit with the Secretary-General. This facilitates the prompt processing of the relevant actions.

### 3.4 Provisional application

(See the *Summary of Practice*, para. 240.)

Some treaties provide for provisional application, either before or after their entry into force. For example, article 7(1) of the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*, 1994, provides “If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force”. The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, 1995, also provides for provisional application, ceasing upon its entry into force.

A State provisionally applies a treaty that has entered into force when it unilaterally undertakes, in accordance with its provisions, to give effect to the treaty obligations provisionally, even though its domestic procedural requirements for international ratification, approval, acceptance or accession have not yet been completed. The intention of the State would generally be to ratify, approve, accept or accede to the treaty once its domestic procedural requirements have been met. The State may unilaterally terminate such provisional application at any time unless the treaty provides otherwise (see article 25 of the Vienna Convention 1969). In contrast, a State that has consented to be bound by a treaty through ratification, approval, acceptance, accession or definitive signature is governed by the rules on withdrawal and denunciation specified in the treaty as discussed in section 4.5 (see articles 54 and 56 of the Vienna Convention 1969).

### 3.5 Reservations

(See section 6.4, which shows how to arrange with the Treaty Section to make a reservation or declaration. See also the *Summary of Practice*, paras. 161-216.)

### 3.5.1 What are reservations?

In certain cases, States make statements upon signature, ratification, acceptance, approval of or accession to a treaty. Such statements may be entitled “reservation”, “declaration”, “understanding”, “interpretative declaration” or “interpretative statement”. However phrased or named, any such statement purporting to exclude or modify the legal effect of a treaty provision with regard to the declarant is, in fact, a reservation (see article 2(1)(d) of the Vienna Convention 1969). A reservation may enable a State to participate in a multilateral treaty that the State would otherwise be unwilling or unable to participate in.

### 3.5.2 Vienna Convention 1969

Article 19 of the Vienna Convention 1969 specifies that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, make a reservation unless:

- (a) The reservation is prohibited by the treaty;
- (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the treaty.

In some cases, treaties specifically prohibit reservations. For example, article 120 of the *Rome Statute of the International Criminal Court*, 1998, provides: “No reservations may be made to this Statute”. Similarly, no entity may make a reservation or exception to the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*, 1994, except where expressly permitted elsewhere in the agreement.

### 3.5.3 Time for formulating reservations

Formulating reservations upon signature, ratification, acceptance, approval or accession  
Article 19 of the Vienna Convention 1969 provides for reservations to be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession. If a reservation is made upon simple signature (i.e., signature subject to ratification, acceptance or approval), it is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound.

Formulating reservations after ratification, acceptance, approval or accession

Where the Secretary-General, as depositary, receives a reservation after the deposit of the instrument of ratification, acceptance, approval or accession that meets all the necessary requirements, the Secretary-General circulates the reservation to all the States concerned. The Secretary-General accepts the reservation in deposit only if no such State informs him that it does not wish him to consider it to have accepted that reservation. This is a situation where the Secretary-General’s practice deviates from the strict requirements of the Vienna Convention 1969. On 4 April 2000, in a letter addressed to the Permanent Representatives to the United Nations, the Legal Counsel advised that the time limit for objecting to such a reservation would be 12 months from the date of the depositary notification. The same principle has been applied by the Secretary-General, as depositary, where a reserving State to a treaty has withdrawn an initial reservation but has

substituted it with a new or modified reservation ( LA 41TR/221 (23-1) (extracted in annex 2)).

### 3.5.4 Form of reservations

Normally, when a reservation is formulated, it must be included in the instrument of ratification, acceptance, approval or accession or be annexed to it and (if annexed) must be separately signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

### 3.5.5 Notification of reservations by the depositary

Where a treaty expressly prohibits reservations

Where a treaty expressly prohibits reservations, the Secretary-General, as depositary, may have to make a preliminary legal assessment as to whether a given statement constitutes a reservation. If the statement has no bearing on the State's legal obligations, the Secretary-General circulates the statement to the States concerned.

If a statement on its face, however phrased or named (see article 2(1)(d) of the Vienna Convention 1969), unambiguously purports to exclude or modify the legal effects of provisions of the treaty in their application to the State concerned, contrary to the provisions of the treaty, the Secretary-General will refuse to accept that State's signature, ratification, acceptance, approval or accession in conjunction with the statement. The Secretary-General will draw the attention of the State concerned to the issue and will not circulate the unauthorised reservation. This practice is followed only in instances where, *prima facie*, there is no doubt that the reservation is unauthorised and that the statement constitutes a reservation.

Where such a *prima facie* determination is not possible, and doubts remain, the Secretary-General may request a clarification from the declarant on the real nature of the statement. If the declarant formally clarifies that the statement is not a reservation but only a declaration, the Secretary-General will formally receive the instrument in deposit and notify all States concerned accordingly.

The Secretary-General, as depositary, is not required to request such clarifications automatically; rather, it is for the States concerned to raise any objections they may have to statements they consider to be unauthorised reservations.

For example, articles 309 and 310 of the *United Nations Convention on the Law of the Sea, 1982*, provide that States may not make reservations to the Convention (unless expressly permitted elsewhere in the Convention) and that declarations or statements, however phrased or named, may only be made if they do not purport to exclude or modify the legal effect of the provisions of the Convention in their application to the reserving State.

Where a treaty expressly authorises reservations

Where a State formulates a reservation that is expressly authorised by the relevant treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification. Unless a translation or an in-depth analysis is required, such a notification is processed and transmitted by e-mail to the States concerned on the date of formulation. A

reservation of this nature does not require any subsequent acceptance by the States concerned, unless the treaty so provides (see article 20(1) of the Vienna Convention 1969).

Where a treaty is silent on reservations

Where a treaty is silent on reservations and a State formulates a reservation consistent with article 19 of the Vienna Convention 1969, the Secretary-General, as depositary, informs the States concerned of the reservation by depositary notification, including by e-mail. Generally, human rights treaties do not contain provisions relating to reservations.

### 3.5.6 Objections to reservations

Time for making objections to reservations

Where a treaty is silent on reservations and a reservation is formulated and subsequently circulated, States concerned have 12 months to object to the reservation, beginning on the date of the depositary notification or the date on which the State expressed its consent to be bound by the treaty, whichever is later (see article 20(5) of the Vienna Convention 1969).

Where a State concerned lodges an objection to a treaty with the Secretary-General after the end of the 12-month period, the Secretary-General circulates it as a "communication". See, e.g., the objection dated 27 April 2000 by a State to a reservation that another State made upon its accession on 22 January 1999 to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989* (depositary notification C.N.276.2000.TREATIES-7):

The Government of (name of State) has examined the reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights. The Government of (name of State) recalls that reservations other than the kind referred to in Article 2 of the Protocol are not permitted. The reservation made by the Government of (name of State) goes beyond the limit of Article 2 of the Protocol, as it does not limit the application of the death penalty to the most serious crimes of a military nature committed during the time of war. The Government of (name of State) therefore objects to the aforesaid reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

This shall not preclude the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights between (name of State) and (name of State), without (name of State) benefiting from the reservation.

Many States have formulated reservations to the International Covenant on Civil and Political Rights, 1966, and the Convention on the Elimination of All Forms of Discrimination against Women, 1979, subjecting their obligations under the treaty to domestic legal requirements. These reservations, in turn, have attracted a wide range of objections from States parties (see Multilateral Treaties Deposited with the Secretary-General ST/LEG/SER.E/19, volume I, part I, chapter IV).

Effect of objection on entry into force of reservations

An objection to a reservation "... does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State" (article 20(4)(b) of the Vienna Convention 1969).

Normally, to avoid uncertainty, an objecting State specifies whether its objection to the reservation precludes the entry into force of the treaty between itself and the reserving State. The Secretary-General circulates such objections.

See, e.g., the objection by a State to a reservation that another State made upon its accession to the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (depository notification C.N.204.1998.TREATIES-6):

The Government of (name of State) considers the reservations made by (name of State) regarding article 9, paragraph 2, and article 16 first paragraph (c), (d), (f) and (g), of the Convention on the Elimination of All Forms of Discrimination against Women

incompatible with the object and purpose of the Convention (article 28, paragraph 2).

This objection shall not preclude the entry into force of the Convention between (name of State) and (name of State).

If a State does not object to a reservation made by another State, the first State is deemed to have tacitly accepted the reservation (article 21(1) of the Vienna Convention 1969).

### 3.5.7 *Withdrawal of reservations*

A State may, unless the treaty provides otherwise, withdraw its reservation or objection to a reservation completely or partially at any time. In such a case, the consent of the States concerned is not necessary for the validity of the withdrawal (articles 22-23 of the Vienna Convention 1969). The withdrawal must be formulated in writing and signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. The Secretary-General, as depository, circulates a notification of a withdrawal to all States concerned, as, for example, depository notification C.N.899.2000.TREATIES-7:

The reservation submitted by (name of State) with regard to Article 7 (b) on the occasion of the ratification of the Convention on the Elimination of All Forms of Discrimination against Women is withdrawn.

Article 22(3) of the Vienna Convention 1969 provides that the withdrawal of a reservation becomes operative in relation to another State only when that State has been notified of the withdrawal. Similarly, the withdrawal of an objection to a reservation becomes operative when the reserving State is notified of the withdrawal.

### 3.5.8 *Modifications to reservations*

An existing reservation may be modified so as to result in a partial withdrawal or to create new exemptions from, or modifications of, the legal effects of certain provisions of a treaty. A modification of the latter kind has the nature of a new reservation. The Secretary-General, as depository, circulates such modifications and grants the States concerned a specific period within which to object to them. In the absence of objections, the Secretary-General accepts the modification in deposit.

In the past, the Secretary-General's practice as depository had been to stipulate 90 days as the period within which the States concerned could object to such a modification. However, since the modification of a reservation could involve complex issues of law and policy, the Secretary-General decided that this time period was inadequate. Therefore, on 4 April 2000, the Secretary-General advised that the time provided for

objections to modifications would be 12 months from the date of the depository notification containing the modification (LA 41 TR/221 (23-1) (extracted in annex 2)).

See, e.g., the modification of a reservation made by a State upon its accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989 (depository notification C.N.934.2000.TREATIES-15):

In keeping with the depository practice followed in similar cases, the Secretary-General proposes to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 12 months from the date of the present depository notification. In the absence of any such objection, the above modification will be accepted for deposit upon the expiration of the above-stipulated 12-month period, that is on 5 October 2001.

## 3.6 **Declarations**

(See the *Summary of Practice*, paras. 217-220.)

### 3.6.1 *Interpretative declarations*

A State may make a declaration about its understanding of a matter contained in or the interpretation of a particular provision in a treaty. Interpretative declarations of this kind, unlike reservations, do not purport to exclude or modify the legal effects of a treaty. The purpose of an interpretative declaration is to clarify the meaning of certain provisions or of the entire treaty.

Some treaties specifically provide for interpretative declarations. For example, when signing, ratifying or acceding to the *United Nations Convention on the Law of the Sea, 1982*, a State may make declarations with a view to harmonising its laws and regulations with the provisions of that convention, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of the convention in their application to that State.

### 3.6.2 *Optional and mandatory declarations*

Treaties may provide for States to make optional and/or mandatory declarations. These declarations are legally binding on the declarants.

#### Optional declarations

Many human rights treaties provide for States to make optional declarations that are legally binding upon them. In most cases, these declarations relate to the competence of human rights commissions or committees (see section 4.3). See, e.g., article 41 of the *International Covenant on Civil and Political Rights, 1966*:

A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. ...

#### Mandatory declarations

Where a treaty requires States becoming party to it to make a mandatory declaration, the Secretary-General, as depository, seeks to ensure that they make such declarations.



Some disarmament and human rights treaties provide for mandatory declarations, as, for example, article 3 of the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*. Article 3(2) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*, provides:

Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

Mandatory declarations also appear in some treaties on the law of the sea. For example, when an international organization signs the *United Nations Convention on the Law of the Sea, 1982* (UNCLOS), or the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995* (1995 Agreement), it must make a declaration specifying the matters governed by UNCLOS in respect of which the organization's member States have conferred competence on the organization, and the nature and extent of that competence. The States conferring such competence must be signatories to UNCLOS. Where an international organization has competence over all matters governed by the 1995 Agreement, it must make a declaration to that effect upon signature or accession, and its member States may not become States parties to the 1995 Agreement except in respect of any of their territories for which the international organization has no responsibility.

### 3.6.3 Time for formulating declarations

Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification, acceptance, approval or accession. Sometimes, a declaration may be lodged subsequently.

### 3.6.4 Form of declarations

Since an interpretative declaration does not have a legal effect similar to that of a reservation, it need not be signed by a formal authority as long as it clearly emanates from the State concerned. Nevertheless, such a declaration should preferably be signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. This practice avoids complications in the event of a doubt whether the declaration in fact constitutes a reservation.

Optional and mandatory declarations impose legal obligations on the declarant and therefore must be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities.

### 3.6.5 Notification of declarations by the depositary

The Secretary-General, as depositary, reviews all declarations to treaties that prohibit reservations to ensure that they are *prima facie* not reservations (see the discussion on prohibited reservations in section 3.5.5). Where a treaty is silent on or authorises reservations, the Secretary-General makes no determination about the legal status of

declarations relating to that treaty. The Secretary-General simply communicates the text of the declaration to all States concerned by depositary notification, including by e-mail, allowing those States to draw their own legal conclusions as to its status.

### 3.6.6 Objections to declarations

Objections to declarations where the treaty is silent on reservations

States sometimes object to declarations relating to a treaty that is silent on reservations. The Secretary-General, as depositary, circulates any such objection. For example, the Federal Republic of Germany made declarations to certain treaties with the effect of extending the provisions of those treaties to West Berlin. The Union of Soviet Socialist Republics objected to these declarations (see, e.g., notes 3 and 4 to the *Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976*, in *Multilateral Treaties Deposited with the Secretary-General, ST/LEG/SER.E/19*, volume II, part I, chapter XXXVI.1).

Objections generally focus on whether the statement is merely an interpretative declaration or is in fact a true reservation sufficient to modify the legal effects of the treaty. If the objecting State concludes that the declaration is a reservation and/or incompatible with the object and purpose of the treaty, the objecting State may prevent the treaty from entering into force between itself and the reserving State. However, if the objecting State intends this result, it should specify it in the objection.

See, e.g., the objection by a State to a declaration made by another State upon its accession to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (depositary notification C.N.910.1999.TREATIES-13):

The Government of (name of State) notes that the declaration made by (name of State) in fact constitutes a reservation since it is aimed at precluding or modifying the legal effect of certain provisions of the treaty. A reservation which consists in a general reference to domestic law without specifying its contents does not clearly indicate to the other parties to what extent the State which issued the reservation commits itself when acceding to the Convention. The Government of (name of State) considers the reservation of (name of State) incompatible with the objective and purpose of the treaty, in respect of which the provisions relating to the right of victims of acts of torture to obtain redress and compensation, which ensure the effectiveness and tangible realization of obligations under the Convention, are essential, and consequently lodges an objection to the reservation entered by (name of State) regarding article 14, paragraph 1. This objection does not prevent the entry into force of the Convention between (name of State) and (name of State).

An objecting State sometimes requests that the declarant “clarify” its intention. In such a situation, if the declarant agrees that it has formulated a reservation, it may either withdraw its reservation or confirm that its statement is only a declaration.

## 4.2 Entry into force

(See the *Summary of Practice*, paras. 221-247.)

### 4.2.1 Definitive entry into force

Typically, the provisions of a multilateral treaty determine the date upon which the treaty enters into force. Where a treaty does not specify a date or provide another method for its entry into force, the treaty is presumed to be intended to come into force as soon as all negotiating States have consented to be bound by the treaty.

Treaties, in general, may enter into force:

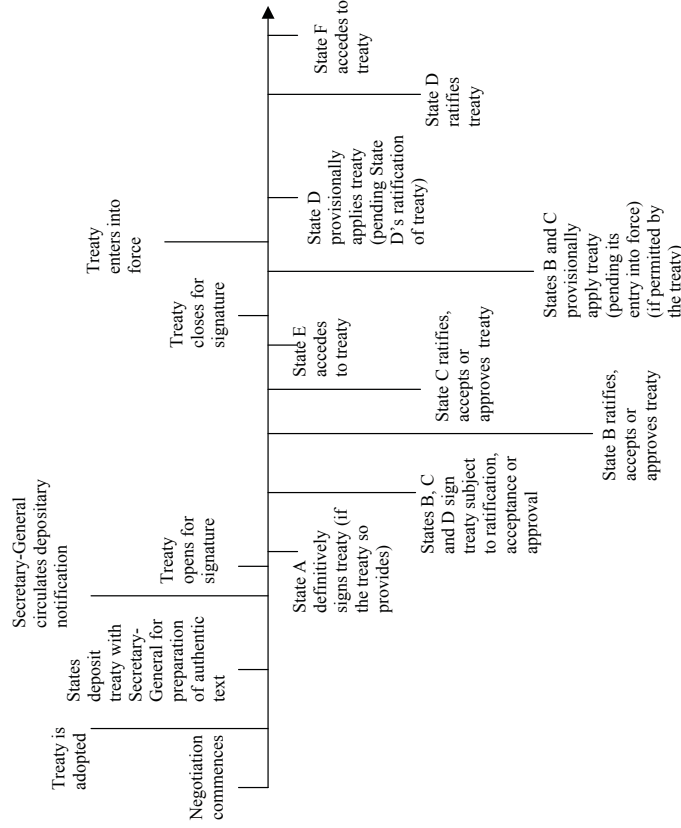
- (a) Upon a certain number of States depositing instruments of ratification, approval, acceptance or accession with the depositary.  
See, e.g., article VIII of the *Protocol relating to the Status of Refugees, 1967*:  
The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
- (b) Upon a certain percentage, proportion or category of States depositing instruments of ratification, approval, acceptance or accession with the depositary.  
See, e.g., article XIV of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*:  
This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.
- (c) A specific time after a certain number of States have deposited instruments of ratification, acceptance, approval or accession with the depositary.  
See, e.g., article 126(1) of the *Rome Statute of the International Criminal Court, 1998*:  
This Statute shall enter into force on the first day of the month after the 60<sup>th</sup> day following the date of the deposit of the 60<sup>th</sup> instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
- (d) On a specific date.  
See, e.g., article 45(1) of the *International Coffee Agreement 2001, 2000*:  
This Agreement shall enter into force definitively on 1 October 2001 if by that date Governments representing at least 15 exporting Members holding at least 70 percent of the votes of the exporting Members and at least 10 importing Members holding at least 70 percent of the votes of the importing Members, calculated as at 25 September 2001, without reference to possible suspension under the terms of Articles 25 and 42, have deposited instruments of ratification, acceptance or approval. ...

Once a treaty has entered into force, if the number of parties subsequently falls below the minimum number specified for entry into force, the treaty remains in force unless the treaty itself provides otherwise (see article 55 of the Vienna Convention 1969).

## 4 KEY EVENTS IN A MULTILATERAL TREATY

### 4.1 Overview

This section outlines what happens to a treaty after it is adopted. The time line below shows a possible sequence of events as a treaty enters into force and States become parties to it.



#### 4.2.2 *Entry into force for a state*

Where a State definitively signs or ratifies, accepts, approves or accedes to a treaty that has already entered into force, the treaty enters into force for that State according to the relevant provisions of the treaty. Treaties often provide for entry into force for a State in these circumstances:

- (a) At a specific time after the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession.

See, e.g., article 126(2) of the *Rome Statute of the International Criminal Court, 1998*:

For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60<sup>th</sup> instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60<sup>th</sup> day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

- (b) On the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession.  
See, e.g., article VIII of the *Protocol relating to the Status of Refugees, 1967*:

For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

#### 4.2.3 *Provisional entry into force*

It is noted, nevertheless, that some treaties include provisions for their provisional entry into force. This enables States that are ready to implement the obligations under a treaty to do so among themselves, without waiting for the minimum number of ratifications necessary for its formal entry into force, if this number is not obtained within a given period. See, e.g., the *International Coffee Agreement, 1994, as extended until 30 September 2001, with modifications, by Resolution No. 384 adopted by the International Coffee Council in London on 21 July 1999, 1994*. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner.

#### 4.3 *Dispute resolution and compliance mechanisms*

Many treaties contain detailed dispute resolution provisions, but some contain only elementary provisions. Where a dispute, controversy or claim arises out of a treaty (for example, due to breach, error, fraud, performance issues, etc.) these provisions become extremely important. If a treaty does not provide a dispute resolution mechanism, article 66 of the Vienna Convention 1969 may apply.

Treaties may provide various dispute resolution mechanisms, such as negotiation, consultation, conciliation, use of good offices, panel procedures, arbitration, judicial settlement, reference to the International Court of Justice, etc. See, e.g., article 119(2) of the *Rome Statute of the International Criminal Court, 1998*:

Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months

of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

In some recently concluded treaties, detailed compliance mechanisms are included. Many disarmament treaties and some environmental treaties provide compliance mechanisms, for example, by imposing monitoring and reporting requirements. See, e.g., article 8 of the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, which provides that the parties "... shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance". During the Fourth Meeting of the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Copenhagen 1992), the parties adopted a detailed non-compliance procedure (*Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, 1992* (UNEP/OzL.Pro.4/15), decision IV/5, and annexes IV and V; see <<http://www.unep.org>>).

Many human rights treaties provide for independent committees to oversee the implementation of their provisions. For example, the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999*; and the *International Covenant on Civil and Political Rights, 1966*.

#### 4.4 *Amendments*

(See the *Summary of Practice*, paras. 248-255.)

##### 4.4.1 *Amending treaties that have entered into force*

The text of a treaty may be amended in accordance with the amendment provisions in the treaty itself or in accordance with chapter IV of the Vienna Convention 1969. If the treaty does not specify any amendment procedures, the parties may negotiate a new treaty or agreement amending the existing treaty.

An amendment procedure within a treaty may contain provisions governing the following:

- (a) Proposal of amendments

See, e.g., article 12(1) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*:

Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. ....

- (b) Circulation of proposals of amendments

Normally, the relevant treaty secretariat circulates proposals of amendment. The treaty secretariat is in the best position to determine the validity of the amendment proposed and undertake any necessary



consultation. The treaty itself may detail the secretariat's role in this regard. In the absence of circulation of the amendment by the treaty body, the Secretary-General, as depositary, may perform this function.

- (c) Adoption of amendments  
Amendments may be adopted by States parties at a conference or by an executive body such as the executive arm of the treaty. See, e.g., article 13(4) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

An amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

- (d) Parties' consent to be bound by amendments  
Treaties normally specify that a party must formally consent to be bound by an amendment, following adoption, by depositing an instrument of ratification, acceptance or approval of the amendment. See, e.g., article 39(3) of the *United Nations Convention against Transnational Organized Crime, 2000*:

An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

- (e) Entry into force of amendments  
An amendment can enter into force in a number of ways, e.g., upon:
- (i) Adoption of the amendment;
  - (ii) Elapse of a specified time period (30 days, three months, etc.);
  - (iii) Its assumed acceptance by consensus if, within a certain period of time following its circulation, none of the parties to the treaty objects; or
  - (iv) Deposit of a specified number of instruments of ratification, acceptance or approval, etc.

See, e.g., article 20(4) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*:

Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

- (f) Effect of amendments: two approaches  
Depending on the treaty provisions, an amendment to a treaty may, upon its entry into force, bind:
- (i) Only those States that formally accepted the amendment (see paragraph (d) above); or
  - (ii) In rare cases, all States parties to the treaty.

- (g) States that become parties after the entry into force of an amendment  
Where a State becomes party to a treaty which has undergone amendment, it becomes party to the treaty as amended, unless otherwise indicated (see article 40(5)(a) of the Vienna Convention 1969). The provisions of the treaty determine which States are bound by the amendment. See, e.g., article 13(5) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

An amendment to this Convention shall enter into force for all States Parties to this Convention, which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

#### 4.4.2 *Amending treaties that have not entered into force*

Where a treaty has not entered into force, it is not possible to amend the treaty pursuant to its own provisions. Where States agree that the text of a treaty needs to be revised, subsequent to the treaty's adoption, but prior to its entry into force, signatories and contracting parties may meet to adopt additional agreements or protocols to address the problem. While contracting parties and signatories play an essential role in such negotiations, it is not unusual for all interested countries to participate. See, e.g., the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*.

#### 4.4.3 *Determining the date on which an amendment enters into force*

The Secretary-General, as depositary, is guided by the amendment provisions of a treaty in determining when an amendment to the treaty enters into force. Many treaties specify that an amendment enters into force when a specified number of ratifications, acceptances or approvals are received by the depositary. However, where the amendment provision specifies that entry into force occurs when a certain proportion of the parties to a treaty have ratified, accepted or approved the amendment, then the determination of the time of entry into force becomes less certain. For example, if an amendment is to enter into force after two-thirds of the parties have expressed their consent to be bound by it, does this mean two-thirds of the parties to the treaty at the time the amendment is adopted or two-thirds of the parties to the treaty at any given point in time following such adoption?

In these cases, it is the Secretary-General's practice to apply the latter approach, sometimes called the current time approach. Under this approach, the Secretary-General, as depositary, counts all parties at any given time in determining the time an amendment enters into force. Accordingly, States that become parties to a treaty after the adoption of an amendment but before its entry into force are also counted. As far back as 1973, the Secretary-General, as depositary, applied the current time approach to the amendment of Article 61 of the *Charter of the United Nations*.

## 4.5 Withdrawal and denunciation

(See the *Summary of Practice*, paras. 157-160.)

In general terms, a party may withdraw from or denounce a treaty:

- (a) In accordance with any provisions of the treaty enabling withdrawal or denunciation (see article 54(a) of the Vienna Convention 1969);
  - (b) With the consent of all parties after consultation with all contracting States (see article 54(b) of the Vienna Convention 1969); or
  - (c) In the case of a treaty that is silent on withdrawal or denunciation, by giving at least 12 months' notice, and provided that:
    - (i) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
    - (ii) A right of denunciation or withdrawal may be implied by the nature of the treaty (see article 56 of the Vienna Convention 1969).
- States wishing to invoke article 56 of the Vienna Convention 1969 (c)(i) and (ii) above) carry the burden of proof.

Some treaties, including human rights treaties, do not contain withdrawal provisions. See, e.g., the *International Covenant on Civil and Political Rights, 1966*. The Secretary-General, as depositary, has taken the view that it would not appear possible for a party to withdraw from such a treaty except in accordance with article 54 or 56 of the Vienna Convention 1969 (see depositary notification C.N.467.1997.TREATIES-10).

Where a treaty contains provisions on withdrawal, the Secretary-General is guided by those provisions. For example, article 12(1) of the *Optional Protocol to the International Covenant on Civil and Political Rights, 1966*, provides for denunciation by States parties as follows:

Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

This provision has been used by a State to notify the Secretary-General of its intention to denounce the Protocol.

## 4.6 Termination

(See the *Summary of Practice*, paras. 256-262.)

Treaties may include a provision regarding their termination. Article 42(2) of the Vienna Convention 1969 states that a treaty may only be terminated as a result of the application of the provisions of the treaty itself or of the Vienna Convention 1969 (e.g., articles 54, 56, 59-62 and 64). A treaty can be terminated by a subsequent treaty to which all the parties of the former treaty are also party.

## 5 REGISTERING OR FILING AND RECORDING TREATIES

### 5.1 Article 102 of the Charter of the United Nations

(See the *Repertory of Practice*, Article 102, para. 1.)

Article 102 of the *Charter of the United Nations* provides that:

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.

Thus, States Members of the United Nations have a legal obligation to register treaties and international agreements with the Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements. Within the Secretariat, the Treaty Section is responsible for these functions.

Registration, not publication, is the prerequisite for a treaty or international agreement to be capable of being invoked before the International Court of Justice or any other organ of the United Nations.

The objective of article 102, which can be traced back to article 18 of the *Covenant of the League of Nations*, is to ensure that all treaties and international agreements remain in the public domain and thus assist in eliminating secret diplomacy. The *Charter of the United Nations* was drafted in the aftermath of the Second World War. At that time, secret diplomacy was believed to be a major cause of international instability.

### 5.2 Regulations to give effect to Article 102

(See the *Repertory of Practice*, Article 102, para. 2, and the annex to the General Survey.)

Recognising the need for the Secretariat to have uniform guidelines for implementing article 102, the General Assembly adopted certain Regulations to give effect to article 102 (see the Abbreviations section for the source of the Regulations). The Regulations treat the act of registration and the act of publication as two distinct operations. Parts one and two of the Regulations (articles 1-11) deal with registration and filing and recording. Part three of the Regulations (articles 12-14) relates to publication.

### 5.3 Meaning of treaty and international agreement under Article 102

#### 5.3.1 Role of Secretariat

(See the *Repertory of Practice*, Article 102, para. 15.)

When the Secretariat receives instruments for the purpose of registration, the Treaty Section examines the instruments to determine whether they are capable of being registered. The Secretariat generally respects the view of a party submitting an instrument for registration that, in so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. However, the Secretariat examines each instrument to satisfy itself that it, *prima facie*, constitutes a treaty. The

Secretariat has the discretion to refrain from taking action if, in its view, an instrument submitted for registration does not constitute a treaty or an international agreement or does not meet all the requirements for registration stipulated by the Regulations (see section 5.6).

Where an instrument submitted fails to comply with the requirements under the Regulations or is unclear, the Secretariat places it in a “pending” file. The Secretariat then requests clarification, in writing, from the submitting party. The Secretariat will not process the instrument until it receives such clarification.

Where an instrument is registered with the Secretariat, this does not imply a judgement by the Secretariat of the nature of the instrument, the status of a party, or any similar question. Thus, the Secretariat’s acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status. Similarly, registration does not confer on a party to a treaty or international agreement a status that it would not otherwise have.

### 5.3.2 *Form*

(See the *Repertory of Practice*, Article 102, paras. 18-30.)

The *Charter of the United Nations* does not define the terms treaty or international agreement. Article 1 of the Regulations provides guidance on what comprises a treaty or international agreement by adding the phrase “whatever its form and descriptive name”. Therefore, the title and form of a document submitted to the Secretariat for registration are less important than its content in determining whether it is a treaty or international agreement. An exchange of notes or letters, a protocol, an accord, a memorandum of understanding and even a unilateral declaration may be registrable under Article 102.

### 5.3.3 *Parties*

A treaty or international agreement under Article 102 (other than a unilateral declaration) must be concluded between at least two parties possessing treaty-making capacity. Thus, a sovereign State or an international organization with treaty-making capacity can be a party to a treaty or international agreement.

Many international organizations established by treaty or international agreement have been specifically or implicitly conferred treaty-making capacity. Similarly, some treaties recognise the treaty-making capacity of certain international organizations such as the European Community. However, an international entity established by treaty or international agreement may not necessarily have the capacity to conclude treaties.

### 5.3.4 *Intention to create legal obligations under international law*

A treaty or international agreement must impose on the parties legal obligations binding under international law, as opposed to mere political commitments. It must be clear on the face of the instrument, whatever its form, that the parties intend to be legally bound under international law.

In one instance, the Secretariat concluded that an instrument submitted for registration, which contained a framework for creating an association of parliamentarians, was not registrable under Article 102. Accordingly, the instrument was not registered. The

Secretariat determined that the document submitted was not a treaty or international agreement among international juridical persons to create rights and obligations enforceable under international law.

## 5.4 Types of registration, filing and recording

### 5.4.1 *Registration with the Secretariat*

(See the *Repertory of Practice*, Article 102, paras. 43-44, 55-57 and 67-70, and article 1 of the Regulations in the annex to the General Survey.)

Under Article 102 of the *Charter of the United Nations* (see section 5.1), treaties and international agreements of which at least one party is a Member of the United Nations may be registered with the Secretariat, provided that the treaty or international agreement has entered into force between at least two of the parties and the other requirements for registration are met (article 1 of the Regulations) (see section 5.6).

As mentioned above, Members of the United Nations are obliged to register, under Article 102, all treaties and international agreements concluded after the coming into force of the *Charter of the United Nations*. Thus, the onus to register rests with States Members of the United Nations. Although this obligation is mandatory for States Members of the United Nations, it does not preclude international organizations with treaty-making capacity or non-member States from submitting for registration under Article 102 treaties or international agreements entered into with a State Member.

A specialized agency is permitted to register with the Secretariat a treaty or international agreement that is subject to registration in the following cases (article 4(2) of the Regulations):

- (a) Where the constituent instrument of the specialized agency provides for such registration;
- (b) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;
- (c) Where the specialized agency has been authorized by the treaty or agreement to effect registration.

In accordance with article 1(3) of the Regulations, which provides for registration to be effected “... by any party ...” to a treaty or international agreement, the specialized agency may also register those treaties and international agreements to which it itself is a party.

### 5.4.2 *Filing and recording by the Secretariat*

(See the *Repertory of Practice*, Article 102, paras. 71-81, and article 10 of the Regulations in the annex to the General Survey.)

The Secretariat files and records treaties or international agreements voluntarily submitted to the Secretariat and not subject to registration under Article 102 of the *Charter of the United Nations* or the Regulations. The requirements for registration outlined in section 5.6 in relation to submission of treaties and international agreements for registration apply equally to submission of treaties and international agreements for filing and recording.



Article 10 of the Regulations provides for the Secretariat to file and record the following categories of treaties and international agreements where they are not subject to registration under Article 102:

- (a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies. This covers treaties and international agreements between:
  - (i) The United Nations and non-member States;
  - (ii) The United Nations and specialized agencies or international organizations;
  - (iii) Specialized agencies and non-member States;
  - (iv) Two or more specialized agencies; and
  - (v) Specialized agencies and international organizations.

Although not expressly provided for in the Regulations, it is also the practice of the Secretariat to file and record treaties or international agreements between two or more international organizations other than the United Nations or a specialized agency.

- (b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the *Charter of the United Nations*, but which were not included in the treaty series of the League of Nations; and
- (c) Treaties or international agreements transmitted by a party not a member of the United Nations, which were entered into before or after the coming into force of the *Charter of the United Nations* and which were not included in the treaty series of the League of Nations.

#### 5.4.3 Ex officio registration by the United Nations

(See the *Reperory of Practice*, Article 102, paras. 45-54, and article 4(1) of the Regulations in the annex to the General Survey.)

Article 4(a) of the Regulations provides that every treaty or international agreement that is subject to registration and to which the United Nations is a party shall be registered *ex officio*. *Ex officio* registration is the act whereby the United Nations unilaterally registers all treaties or international agreements to which it is a party. Although not expressly provided for in the Regulations, it is the practice of the Secretariat to register *ex officio* subsequent actions relating to a treaty or international agreement that the United Nations has previously registered *ex officio*.

Where the Secretary-General is the depositary of a multilateral treaty or agreement, the United Nations also registers *ex officio* the treaty or international agreement and subsequent actions to it after the relevant treaty or international agreement has entered into force (see article 4(c) of the Regulations).

## 5.5 Types of agreements registered or filed and recorded

### 5.5.1 Multilateral treaties

A multilateral treaty is an international agreement concluded between three or more parties, each possessing treaty-making capacity (see section 5.3.3).

### 5.5.2 Bilateral treaties

The majority of treaties registered pursuant to Article 102 of the *Charter of the United Nations* are bilateral treaties. A bilateral treaty is an international agreement concluded between two parties, each possessing treaty-making capacity (see section 5.3.3). In some situations, several States or organizations may join together to form one party. There is no standard form for a bilateral treaty.

An essential element of a bilateral treaty is that both parties have reached agreement on its content. Accordingly, reservations and declarations are generally inapplicable to bilateral agreements. However, where the parties to a bilateral treaty have made reservations or declarations, or agreed on some other interpretative document, such instrument must be registered together with the treaty submitted for registration under Article 102 of the *Charter of the United Nations* (see article 5 of the Regulations).

### 5.5.3 Unilateral declarations

(See the *Reperory of Practice*, Article 102, para. 24.)

Unilateral declarations that constitute interpretative, optional or mandatory declarations (see sections 3.6.1 and 3.6.2) may be registered with the Secretariat by virtue of their relation to a previously or simultaneously registered treaty or international agreement.

Unlike interpretative, optional and mandatory declarations, some unilateral declarations may be regarded as having the character of international agreements in their own right and are registered as such. An example is a unilateral declaration made under Article 36(2) of the *Statute of the International Court of Justice*, recognizing as compulsory the jurisdiction of the International Court of Justice. These declarations are registered *ex officio* (see section 5.4.3) when deposited with the Secretary-General.

A political statement lacking legal content and not expressing an understanding relating to the legal scope of a provision of a treaty or international agreement cannot be registered with the Secretariat.

### 5.5.4 Subsequent actions, modifications and agreements

(See the *Reperory of Practice*, Article 102, and article 2 of the Regulations in the annex to the General Survey.)

Subsequent actions effecting a change in the parties to, or the terms, scope or application of, a treaty or international agreement previously registered can be registered with the Secretariat. For example, such actions may involve ratifications, accessions, prolongations, extensions to territories, or denunciations. In the case of bilateral treaties, it is generally the party responsible for the subsequent action that registers it with the Secretariat. However, any other party to such agreement may assume this role. In the case

of a multilateral treaty or agreement, the entity performing the depositary functions usually effects registration of such actions (see section 5.4.3 in relation to treaties or international agreements deposited with the Secretary-General).

Where a new instrument modifies the scope or application of a parent agreement, such new instrument must also be registered with the Secretariat. It is clear from article 2 of the Regulations that for the subsequent treaty or international agreement to be registered, the prior treaty or international agreement to which it relates must first be registered. In order to maintain organizational continuity, the registration number that has been assigned for the registration of the parent treaty or international agreement is also assigned to the subsequent treaty or international agreement.

## 5.6 Requirements for registration

(See the *Repertory of Practice*, Article 102, and article 5 of the Regulations in the annex to the General Survey.)

An instrument submitted for registration must meet the following general requirements:

1. Treaty or international agreement within the meaning of Article 102  
As mentioned above, the Secretariat reviews each document submitted for registration to ensure that it falls within the meaning of a treaty or international agreement under Article 102 (see section 5.3).
2. Certifying statement  
(See the model certifying statement in annex 7.)  
Article 5 of the Regulations requires that a party or specialized agency registering a treaty or international agreement certify that “the text is a true and complete copy thereof and includes all reservations made by parties thereto”. The certified copy must include:
  - (a) The title of the agreement;
  - (b) The place and date of conclusion;
  - (c) The date and method of entry into force for each party; and
  - (d) The authentic languages in which the agreement was drawn up.

When reviewing the certifying statement, the Secretariat requires that all enclosures such as protocols, exchanges of notes, authentic texts, annexes, etc., mentioned in the text of the treaty or international agreement as forming a part thereof, are appended to the copy transmitted for registration. The Secretariat brings the omission of any such enclosures to the attention of the registering party and defers action on the treaty or international agreement until the material is complete.

3. Copy of treaty or international agreement  
Parties must submit ONE certified true and complete copy of **all** authentic text(s), **and** TWO additional copies **or** ONE electronic copy to the Secretariat for registration purposes. The hard copy version(s) should be capable of being reproduced in the United Nations *Treaty Series*.

Further to General Assembly Resolution 53/100, the Secretariat strongly encourages parties to submit, in addition to a certified true copy on paper, an electronic copy, i.e., on computer diskette, CD or as an attachment by e-mail, of the submitted documentation. This assists greatly in the registration and publication process. The preferred format for a treaty or international agreement submitted on diskette is *Word Perfect 6.1 for Windows*, as this is the system that is used in the publication of the United Nations *Treaty Series*. Treaties may also be submitted in *Microsoft Word for Windows* or as a text file (the generic ASCII text format for saving documents). The preferred formats for a treaty or international agreement submitted by e-mail are *Word*, *WordPerfect*, or image (tiff) format. All electronic submissions by e-mail should be directed to [TreatyRegistration@un.org](mailto:TreatyRegistration@un.org).

Member States and international organizations are also reminded of the resolutions of the General Assembly, initially adopted on 12 December 1950 (A/RES/482 (V)) and most recently repeated on 21 January 2000 (A/RES/54/28), urging States to provide English and/or French translations of treaties submitted for registration with the United Nations Secretariat where feasible. Courtesy translations in English and French, or any of the other official languages of the United Nations, greatly assist in the timely and cost-effective publication of the United Nations *Treaty Series*.

4. Date of entry into force  
The documentation submitted must specify the date of entry into force of the treaty or international agreement. A treaty or international agreement will only be registered after it has entered into force.
5. Method of entry into force  
The documentation submitted must specify the method of entry into force of the treaty or international agreement. This is normally provided in the text of the treaty or international agreement.
6. Place and date of conclusion

The documentation submitted must specify the place and date of conclusion of the treaty or international agreement. This is generally inserted on the last page immediately above the signature. The names of the signatories should be specified unless they are in typed form as part of the signature block.

## 5.7 Outcome of registration or filing and recording

### 5.7.1 Database and record

(See the *Repertory of Practice*, Article 102, and article 8 of the Regulations in the annex to the General Survey.)

The database of instruments registered and the record of instruments filed and recorded are kept in English and French. The database and record contain the following information, in respect of each treaty or international agreement:

- (a) Date of receipt of the instrument by the Secretariat of the United Nations;
- (b) Registration number or filing and recording number;
- (c) Title of the instrument;
- (d) Names of the parties;
- (e) Date and place of conclusion;
- (f) Date of entry into force;
- (g) Existence of any attachments, including reservations and declarations;
- (h) Languages in which it was drawn up;
- (i) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (j) Date of registration or filing and recording.

#### 5.7.2 *Date of effect of registration*

(See the *Reperatory of Practice*, Article 102, and article 6 of the Regulations in the annex to the General Survey.)

Under article 6 of the Regulations, the date the Secretariat of the United Nations receives all the specified information relating to the treaty or international agreement is deemed to be the date of registration. A treaty or international agreement registered *ex officio* by the United Nations is deemed to be registered on the date on which the treaty or international agreement comes into force between two or more of the parties thereto. However, if the Secretariat receives the treaty or international agreement after the date of its entry into force, the date of registration is the first available date of the month of receipt.

In accordance with article 1 of the Regulations, registration is effected by a party and not by the Secretariat. The Secretariat makes every effort to complete registration on the date of submission. However, due to certain factors including volume of instruments deposited, need for translations, etc., a certain amount of time may elapse between the receipt of a treaty or international agreement and its inscription in the database.

Registering parties have an important obligation to ensure that documents submitted for registration are complete and accurate in order to avoid delays in the registration and publication processes. In cases where submissions are incomplete or defective, the date of registration of the treaty or international agreement is deemed to be the date of receipt of all of the required documentation and information and not the date of the original submission.

#### 5.7.3 *Certificate of registration*

(See the *Reperatory of Practice*, Article 102, and article 7 of the Regulations in the annex to the General Survey.)

Once a treaty or international agreement is registered, the Secretariat issues to the registering party a certificate of registration signed by the Secretary-General or a representative of the Secretary-General. Upon request, the Secretariat will provide such a certificate to all signatories and parties to the treaty or international agreement. According to established practice, the Secretariat does not issue certificates of registration

in respect of treaties or international agreements that are registered *ex officio* (see section 5.4.3) or filed and recorded (see section 5.4.2).

#### 5.7.4 *Publication*

(See the *Reperatory of Practice*, Article 102, paras. 82-107, and articles 12-14 of the Regulations in the annex to the General Survey.)

##### Monthly Statement

(See the *Reperatory of Practice*, Article 102, and articles 13-14 of the Regulations in the annex to the General Survey.)

Each month, the Secretariat publishes a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month (see article 13 of the Regulations). The Monthly Statement does not contain the texts of treaties or international agreements, but provides certain attributes, in English and French, of the treaties or international agreements registered or filed and recorded, such as the:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Existence of any attachments, including reservations and declarations;
- (g) Languages in which it was drawn up;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (i) Date of registration or filing and recording.

The Monthly Statement is divided into two parts. Part I lists the treaties registered. Part II lists the treaties filed and recorded. In addition, the Monthly Statement contains annexes A, B, and C. Annexes A and B are devoted to certified statements (e.g., ratifications or accessions) and subsequent agreements relating to treaties or international agreements registered or filed and recorded. Annex C lists subsequent actions relating to treaties or international agreements registered with the League of Nations.

##### United Nations Treaty Series

Article 12 of the Regulations provides that the Secretariat shall publish as soon as possible, in a single series every treaty or international agreement that is registered, or filed and recorded. Treaties are published in the United Nations *Treaty Series* in their authentic languages, followed by translations in English and French, as required. Subsequent actions are published in the same manner. The Secretariat requires clear copies of treaties and international agreements for publication purposes.



Limited publication

Originally, article 12 of the Regulations required the Secretariat to publish in full all treaties and international agreements registered or filed and recorded with the Secretariat. The General Assembly modified this framework in its resolution 33/141 of 19 December 1978 in light of the substantial increase in treaty making on the international plane and the publication backlog that existed at that time (*Report of the Secretary-General*, document A/33/258, 2 October 1978, paras. 3 to 7).

According to article 12(2) of the Regulations, as amended in 1978, the Secretariat is no longer required to publish *in extenso*, i.e., in full, bilateral treaties falling within 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 [United Nations *Treaty Series*] by the United Nations Secretariat or by a specialized or related agency.

The publication backlog continued to grow, however, and in 1996 stood at 11 years, i.e., an instrument registered in 1987 was scheduled to be published by 1998 (this backlog has been reduced to approximately 2 ½ years as at 2001). As a result, in 1997, the General Assembly extended the limited publication policy to multilateral treaties, so that the Secretariat now has discretion not to publish *in extenso* bilateral and multilateral treaties or agreements falling within one of the categories listed under article 12(2)(a) to (c) (General Assembly Resolution A/RES/52/153 of 15 December 1997):

The General Assembly...

- 7. Invites the Secretary-General to apply the provisions of article 12, paragraph 2, of the Regulations to give effect to Article 102 of the Charter of the United Nations to multilateral treaties falling within the terms of article 12, paragraph 2 (a) to (c); ...

Lengthy lists of products attached to bilateral or multilateral trade agreements also fall within the limited publication policy. In addition, agreements of the European Union are published only in English and French.

Today, approximately 25 per cent of the treaties registered are subject to the limited publication policy. An example of a multilateral treaty or agreement falling under the extended scope of article 12(2) is 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, 1958*. Due to the highly technical nature of this agreement, which contains over 100 annexed regulations, all of which are subject to amendments on a regular basis, the Secretariat does not publish this agreement in full. However, it is available on the United Nations Optical Disk System and is published by the United Nations Economic Commission for Europe (document E/ECE/324 – E/ECE/TRANS/505; see <<http://www.unece.org>>).

In determining whether or not a treaty or international agreement should be published *in extenso*, the Secretariat is guided by the letter and spirit of the *Charter of the United Nations* and article 12(3) of the Regulations. The primary criterion in making this determination is the requirement that the Secretariat shall:

... duly take into account, *inter alia*, the practical value that might accrue from *in extenso* publication.

Under article 12(3) of the Regulations, the Secretariat may reverse a decision not to publish *in extenso* at any time.

Where the Secretariat exercises the limited publication option in relation to treaties or international agreements registered or filed and recorded, their publication is limited to the following information in accordance with article 12(5) of the Regulations:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Duration of the treaty or international agreement (where appropriate);
- (g) Languages in which it was concluded;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording;
- (i) Date of registration or filing and recording; and
- (i) Where appropriate, reference to publications in which the complete text of the treaty or international agreement is reproduced.

Treaties and international agreements that the Secretariat does not publish *in extenso* are identified as such in the Monthly Statement with an asterisk.

**6 CONTACTS WITH THE TREATY SECTION: PROCEDURAL INFORMATION**

**6.1 General information**

**6.1.1 Contacting the Treaty Section**

Treaty Section  
Office of Legal Affairs  
United Nations  
New York, NY 10017  
USA  
Telephone: +1 212 963 5047  
Facsimile: +1 212 963 3693  
E-mail (general): [treaty@un.org](mailto:treaty@un.org)  
(registration): [TreatyRegistration@un.org](mailto:TreatyRegistration@un.org)  
Website: <http://untreaty.un.org>

**6.1.2 Functions of the Treaty Section**

As mentioned in the Introduction to this Handbook, the Treaty Section of the Office of Legal Affairs of the United Nations discharges the responsibility for the depositary functions of the Secretary-General of the United Nations and the registration and publication of treaties submitted to the Secretariat. This section sets out some steps to follow in contacting the Treaty Section in relation to certain treaty actions.

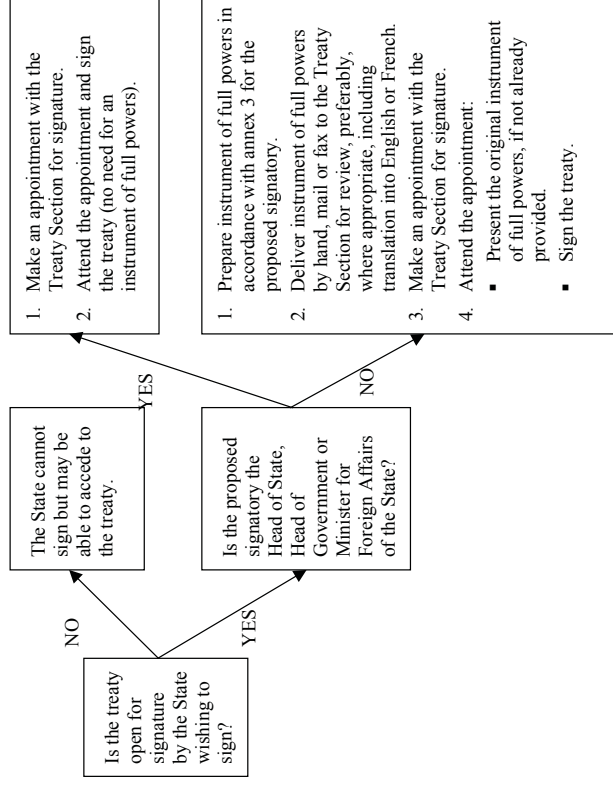
**6.1.3 Delivery of documents**

Most treaty actions become effective only upon deposit of the relevant instrument with the Treaty Section. States are advised to deliver instruments directly to the Treaty Section to ensure they are promptly processed. The date of deposit is normally recorded as that on which the instrument is received at Headquarters, unless the instrument is subsequently deemed unacceptable. Persons who are merely delivering instruments (rather than, for example, signing a treaty) do not require full powers.

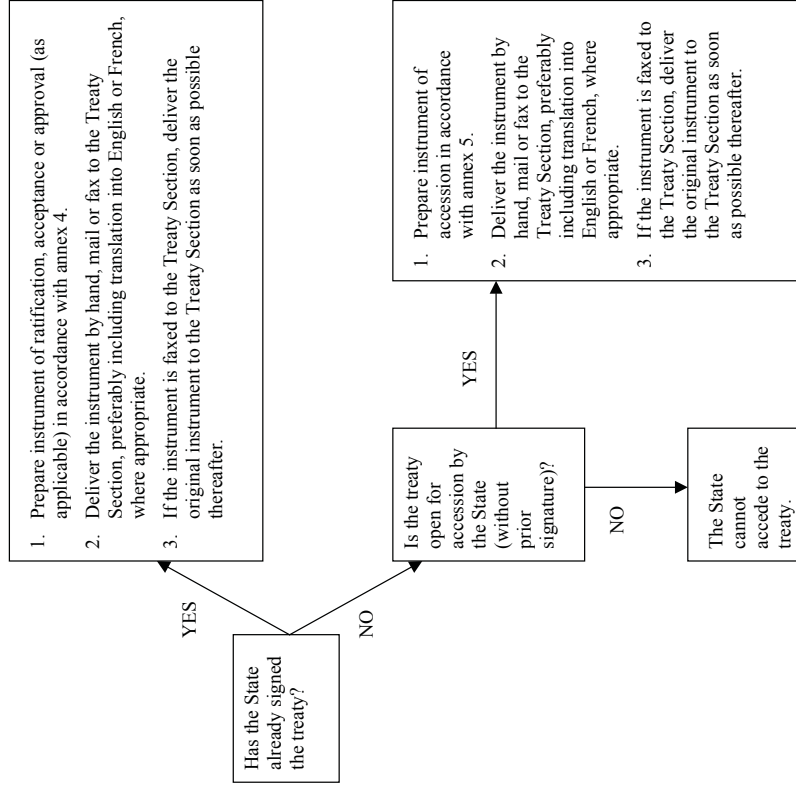
**6.1.4 Translations**

States are encouraged to provide courtesy translations, where feasible, in English and/or French of any instruments in other languages that are submitted to the Treaty Section. This facilitates the prompt processing of the relevant actions.

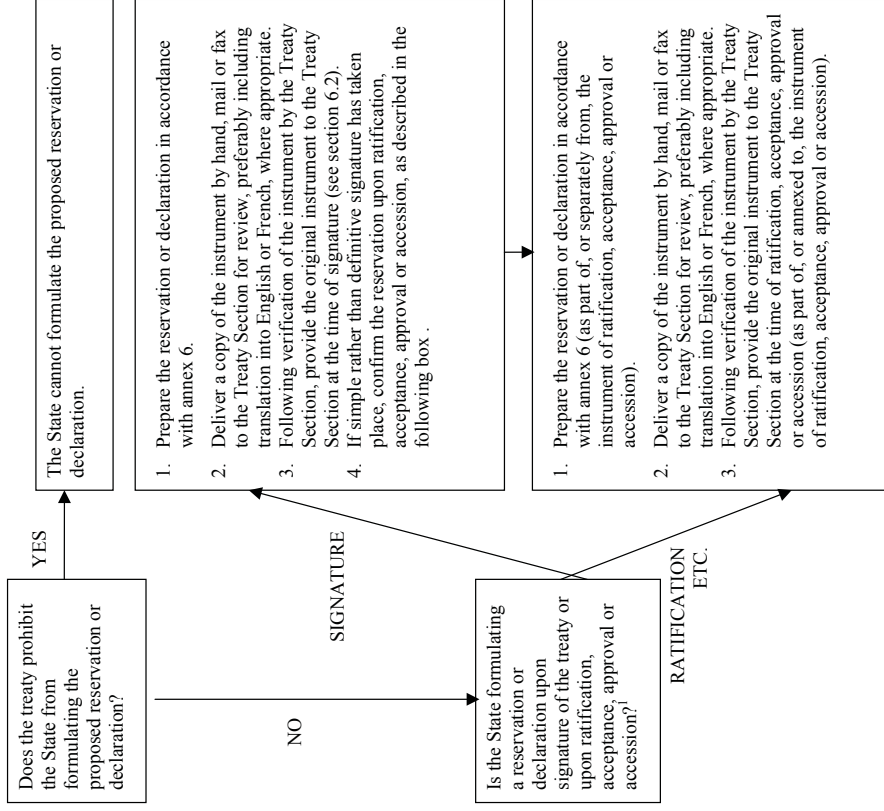
**6.2 Signing a multilateral treaty**



**6.3 Ratifying, accepting, approving or acceding to a multilateral treaty**



**6.4 Making a reservation or declaration to a multilateral treaty**



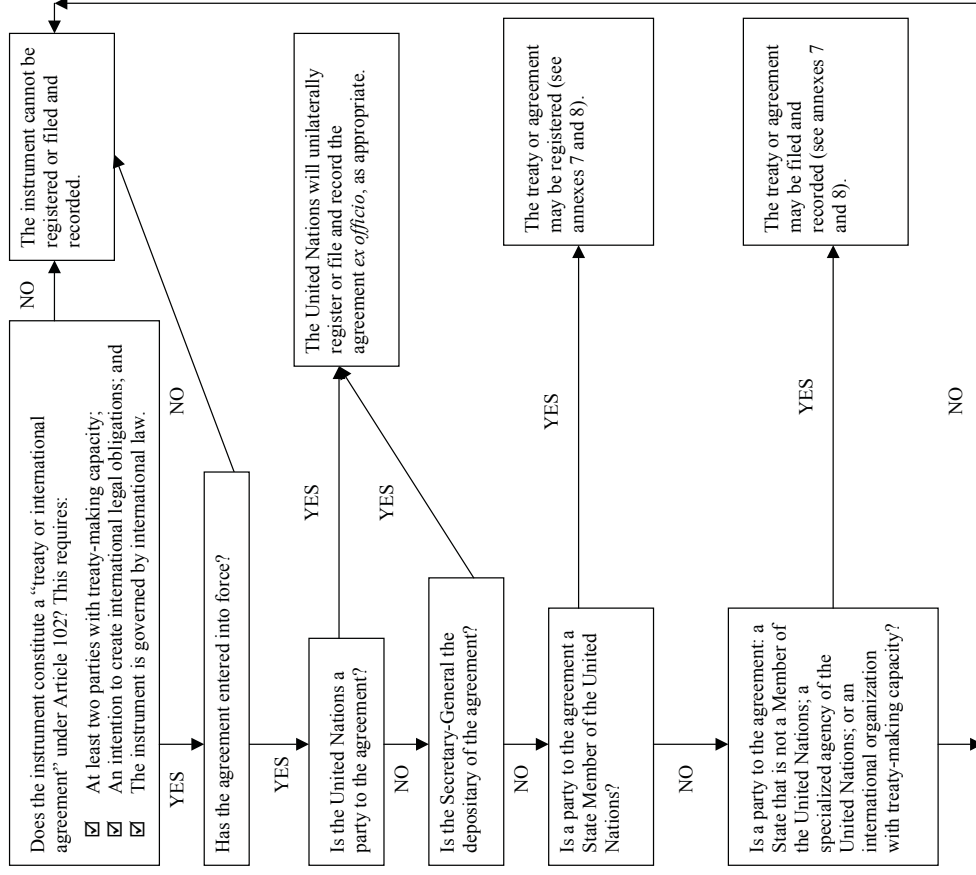
<sup>1</sup> The Secretary-General may accept reservations or declarations other than upon signature, ratification, acceptance, approval or accession on exceptional occasions.



**6.5 Depositing a multilateral treaty with the Secretary-General**

1. Well before the treaty is adopted, contact the Treaty Section, including on the question of the Secretary-General acting as depositary and on the final clauses.
2. Deliver a copy of the treaty (in particular, the draft final clauses of the treaty) to the Treaty Section for review, in the authentic languages of the treaty.
3. Following adoption, deposit the original treaty in all authentic languages with the Treaty Section. In order for the Treaty Section to prepare authentic texts and certified true copies in time for signature, provide camera-ready copies of the treaty as adopted (hard copy and electronic format – Microsoft Word 2000).

**6.6 Registering or filing and recording a treaty with the Secretariat**



**ANNEX 1 – NOTE VERBALE FROM THE LEGAL COUNSEL (FULL POWERS), 1998**

REFERENCE: LA 41 TR/221/1

30 September 1998

H.C.

A copy of a model instrument of full powers is attached for your information.

The Legal Counsel presents his compliments to the Permanent Representatives to the United Nations in New York and has the honour to communicate the following in relation to full powers for the signing of treaties deposited with the Secretary-General:

It has been noted recently that some national representatives have sought to sign treaties deposited with the Secretary-General without full powers, which meet the requirements under treaty law and practice. It is reminded that the Secretary-General's consistent practice relating to full powers has been as follows:

- Proper full powers are required by all persons seeking to sign a treaty deposited with the Secretary-General or to make a reservation upon signature, except Heads of State or Government or Foreign Ministers.
- Full powers should:
  - Bear the signature of the Head of State or Government or the Foreign Minister;
  - Specify clearly the title of the instrument to be signed;
  - State the full name of the person authorized to sign the instrument concerned.

As stated above, full powers are not required where the Head of State or Government or the Foreign Minister signs in person. Furthermore, where general full powers have been issued to a person and have been deposited with the Secretariat in advance, specific full powers are not required.

It is advised that whenever possible full powers should be submitted for verification to the Treaty Section of the United Nations in advance of the intended date of signature.

Further information on full powers could be obtained from the publication “*Summary of Practice of the Secretary-General as Depository of Multilateral Treaties*” (ST/LEG/8).

**ANNEX 2 – NOTE VERBALE FROM THE LEGAL COUNSEL  
(MODIFICATION OF RESERVATIONS), 2000**

REFERENCE: LA 41 TR/221 (23-1)

The Legal Counsel of the United Nations presents his compliments to the Permanent Representatives to the United Nations and has the honour to communicate the following relating to the practice followed by the Secretary-General as depositary in respect of communications from States, which seek to modify their existing reservations to multilateral treaties deposited with the Secretary-General or which may be understood to seek to do so.

The current practice of the Secretary-General is to stipulate a period of 90 days as the length of time within which parties must object to a communication of this nature if they wish the Secretary-General not to accept that communication in deposit.

The Legal Counsel notes in this regard that 90 days is the period, which has been traditionally set by the Secretary-General in his capacity as depositary, for the purpose of assuming tacit consent to a juridical act or proposition.

However, the Secretary-General's attention has been drawn to the complex questions of law and policy, which may fail to be considered by the parties to a treaty, and the necessity that might arise for consultations among them, in deciding what, if any, action should be taken in respect of such a communication. It is his understanding that the 90-day period may be inadequate for this purpose.

Mindful of these considerations, the Legal Counsel is pleased to advise the Permanent Representative that the Secretary-General as depositary intends henceforth to stipulate a period of twelve months as that within which parties must inform him if they wish him not to accept in deposit a communication by a State party which seeks to modify, or may be understood to seek to modify, an existing reservation to a treaty.

In coming to this decision, the Secretary-General has been mindful of the provisions of the Convention on the Law of Treaties, done at Vienna on 23 May 1969. Since a communication, which seeks to modify an existing reservation, is aimed at creating new exemptions from, or modifications of, the legal effects of certain provisions of the treaty in question in their application to the State concerned, such a communication possesses the nature of a new reservation. In determining the period within which parties must inform him if they wish him not to accept in deposit a communication, which is or might be understood to be of such a character, the Secretary-General has accordingly been guided by Article

20, paragraph 5, of the Convention, which indicates a period of twelve months to be appropriate for Governments to analyse and assess a reservation that has been formulated by another State and to decide upon what action, if any, should be taken in respect of it.

By the same token, the Secretary-General as depositary will in future, when circulating a reservation which a State may seek to formulate subsequently to having established its consent to be bound by a treaty, stipulate twelve months as the period within which other parties must inform him if they do not wish him to consider them to have accepted that reservation.

The Legal Counsel of the United Nations avails himself of this opportunity to renew to the Permanent Representatives to the United Nations the assurances of his highest consideration.

4 April 2000

H.C.

**ANNEX 3 – 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]

**ANNEX 4 – 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]

---

\* 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.

**ANNEX 5 – 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]

**ANNEX 6 – MODEL INSTRUMENTS OF  
RESERVATION/DECLARATION**

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

**[RESERVATION / DECLARATION]**

---

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

**HEREBY DECLARE** that the Government of [name of State] makes the following [reservation / declaration] in relation to article(s) [----] of the [title and date of adoption of the treaty, convention, agreement, etc.]:

[Substance of reservation / declaration]

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]



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

### MODIFICATION OF RESERVATION

**WHEREAS** the Government of [name of State] [ratified, approved, accepted, acceded to] the [title and date of adoption of the treaty, convention, agreement, etc.] on [date],

**AND WHEREAS**, upon [ratification, approval, acceptance of / accession to] the [treaty, convention, agreement, etc.], the Government of [name of State] made (a) reservation(s) to article(s) [----] of the [treaty, convention, agreement, etc.],

**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 reviewed the said reservation(s), hereby modifies the same as follows:  
[Substance of modification]

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]

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

### WITHDRAWAL OF RESERVATION (S)

**WHEREAS** the Government of [name of State] [ratified, approved, accepted, acceded to] the [title and date of adoption of the treaty, convention, agreement, etc.] on [date],

**AND WHEREAS**, upon [ratification, approval, acceptance of / accession to] the [treaty, convention, agreement, etc.], the Government of [name of State] made (a) reservation(s) to article(s) [----] of the [treaty, convention, agreement, etc.],

**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 reviewed the said reservation(s), hereby withdraws the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]

## ANNEX 7 – MODEL CERTIFYING STATEMENT FOR REGISTRATION OR FILING AND RECORDING

(Model for the certifying statement required under the General Assembly Regulations to give effect to Article 102 of the Charter)<sup>1</sup>

### CERTIFYING STATEMENT

I, **THE UNDERSIGNED** [name of the authority], hereby certify that the attached text is a true and complete copy of [title of the agreement, name of the Parties, date and place of conclusion], that [it includes all reservations made by Signatories or Parties thereto / no reservations or declarations or objections were made by the Signatories or Parties thereto], and that it was concluded in the following languages: [...]. I further certify that the *additional copy of this Agreement contained on the diskette is a true and complete copy of [title of the agreement]*.<sup>2</sup>

**I FURTHER CERTIFY** that the Agreement came into force on [date] by [method of entry into force], in accordance with [article or provision in the agreement], and that it was signed by [...] and [...].<sup>3</sup>

[Place and date of signature of certifying statement]  
[Signature and title of certifying authority]

<sup>1</sup> For the text of the Regulations adopted by General Assembly resolution 97(I) of 14 December 1946 and later amended by General Assembly resolutions 364B(IV) of 1 December 1949, 482(V) of 12 December 1950 and 33/141 of 19 December 1978, see *United Nations Treaty Series*, volume 859/860, p. VIII, 1973. See also General Assembly resolution 52/153 of 15 December 1997, *Repertory of Practice of United Nations Organs* (Volume V, New York, 1955, Articles 92-111, and Supplements 1 to 6).

<sup>2</sup> The language in italics must be included when additional copies of a treaty are provided on a diskette.

<sup>3</sup> For multilateral agreements, a complete list of signatories should be provided.

## ANNEX 8 – CHECKLIST FOR REGISTRATION

Requirements for submission of treaties and international agreements for registration and publication in accordance with Article 102 of the *Charter of the United Nations*:

| DOCUMENTATION / INFORMATION TO BE PROVIDED   | FORMAT / TYPE OF INFORMATION  |
|--|---|
| 1. Treaty / Agreement  | <ul style="list-style-type: none"> <li>ONE certified true and complete copy of all authentic text(s), and</li> <li>TWO additional copies of ONE electronic copy (on diskette)</li> </ul>  |
| 2. All attachments (annexes, minutes, procès-verbaux, etc.)                                    | Same as (1) above   |
| 3. Text of reservations, declarations, objections  | Same as (1) above   |
| 4. Translations of the Agreement and all attachments into English and/or French (if available) | One paper copy and one electronic copy, if available, where necessary   |
| 5. Title of Treaty / Agreement   | If not printed as part of the text (e.g., for exchange of notes)  |
| 6. Names of signatories  | If not appearing in typed form as part of signature block   |
| 7. Date of signature   | If not clear from the text  |
| 8. Place of signature  | If not clear from the text  |
| 9. Date of entry into force  | In accordance with entry into force provisions  |
| 10. Method of entry into force   | Signature, ratification, approval, accession, etc., including: <ul style="list-style-type: none"> <li>In the case of a bilateral agreement, date and place of exchange of the instruments of ratification or notification; or</li> <li>In the case of a multilateral agreement, date and nature of the instruments deposited by each Contracting Party with the Depository</li> </ul> |

## GLOSSARY

This section provides a guide to terms commonly used in relation to treaties and employed in the practice of the Secretary-General as depositary of multilateral treaties, as well as in the Secretariat's registration function. Where applicable, a reference to relevant provisions of the Vienna Convention 1969 is included.

### **acceptance**

See ratification.

### **accession**

Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession" (see annex 5). Accession has the same legal effect as ratification, acceptance or approval. The conditions under which accession may occur and the procedure involved depend on the provisions of the relevant treaty. Accession is generally employed by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. However, many modern multilateral treaties provide for accession even during the period that the treaty is open for signature. See articles 2(1)(b) and 15 of the Vienna Convention 1969.

### **adoption**

Adoption is the formal act by which negotiating parties establish the form and content of a treaty. The treaty is adopted through a specific act expressing the will of the States and the international organizations participating in the negotiation of that treaty, e.g., by voting on the text, initialling, signing, etc. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.

Treaties that are negotiated within an international organization are usually adopted by resolution of the representative organ of that organization. For example, treaties negotiated under the auspices of the United Nations, or any of its bodies, are adopted by a resolution of the General Assembly of the United Nations.

Where an international conference is specifically convened for the purpose of adopting a treaty, the treaty can be adopted by a vote of two thirds of the States present and voting, unless they have decided by the same majority to apply a different rule.

See article 9 of the Vienna Convention 1969.

### **amendment**

Amendment, in the context of treaty law, means the formal alteration of the provisions of a treaty by its parties. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Multilateral treaties typically provide specifically for their amendment. In the absence of such provisions, the adoption and entry into force of amendments require the consent of all the parties. See articles 39 and 40 of the Vienna Convention 1969.

See ratification.

### **approval**

Authentication is the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, its provisions cannot be modified except by formal amendment. If procedures for authentication have not been specifically agreed, the treaty will usually be authenticated by signature, or initialling, by the representatives of those States. It is this authenticated text that the depositary uses to establish the original text. See article 10 of the Vienna Convention 1969.

### **authentic language**

A treaty typically specifies its authentic languages – the languages in which the meaning of its provisions is to be determined.

### **authentic or authenticated text**

The authentic or authenticated text of a treaty is the version of the treaty that has been authenticated by the parties.

See treaty.

### **bilateral treaty**

### **certified true**

### **copy**

### **certified true copy for depositary purposes**

A certified true copy for depositary purposes means an accurate duplication of an original treaty, prepared in all authentic languages, and certified as such by the depositary of the treaty. The Secretary-General of the United Nations circulates certified true copies of each treaty deposited with the Secretary-General to all States and entities that may become parties to the treaty. For reasons of economy, the Secretary-General, as depositary, normally provides only two certified true copies to each prospective participant in the treaty. States are expected to make any additional copies required to fulfil their domestic needs. See article 77(1)(b) of the Vienna Convention 1969.

### **certified true copy for registration purposes**

A certified true copy for registration purposes means an accurate duplication of a treaty submitted to the Secretariat of the United Nations for registration. The registering party must certify that the text submitted is a true and complete copy of the treaty and that it includes all reservations made by the parties. The date and place of adoption, the date and the method whereby the treaty has come into force, and the authentic languages must be included. See article 5 of the Regulations.

### **certifying statement**

A certifying statement is the statement accompanying the certified true copy of a treaty or a treaty action for registration purposes, certifying that it is such a copy (see section 5.6 and annex 7).

### **C.N.**

See depositary notification.

**consent to be bound**

A State expresses its consent to be bound by a treaty under international law by some formal act, i.e., definitive signature, ratification, acceptance, approval or accession. The treaty normally specifies the act or acts by which a State may express its consent to be bound. See articles 11-18 of the Vienna Convention 1969.

**contracting State**

A contracting State is a State that has expressed its consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for that State. See article 2(1)(f) of the Vienna Convention 1969.

**convention**

Whereas in the last century the term “convention” was regularly employed for bilateral agreements, it is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are entitled to conventions. The same holds true for instruments adopted by an organ of an international organization.

**correction**

Correction of a treaty is the remedying of an error in its text. If, after the authentication of a text, the signatory and contracting States agree that an error exists, those States can correct the error by:

- (a) Initialling the corrected treaty text;
- (b) Executing or exchanging an instrument containing the correction; or
- (c) Executing the corrected text of the whole treaty by the same procedure by which the original text was executed.

If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting States and States parties. In the practice of the United Nations, the Secretary-General, as depositary, informs all States of the error and the proposal to correct it. If, on the expiry of a specified time limit, no signatory or contracting State or State party objects, the Secretary-General circulates a process-verbal of rectification and causes the corrections to be effected in the authentic text(s) *ab initio*. States have 90 days to object to a proposed correction. This period can be shortened if necessary. See article 79 of the Vienna Convention 1969.

**credentials**

Credentials take the form of a document issued by a State authorising a delegate or delegation of that State to attend a conference, including, where necessary, for the purpose of negotiating and adopting the text of a treaty. A State may also issue credentials to enable signature of the Final Act of a conference. Credentials are distinct from full powers. Credentials permit a delegate or delegation to adopt the text of a treaty and/or sign the Final Act, while full powers permit a person to undertake any given treaty action (in particular, signature of

treaties).

**date of effect**

The date of effect of a treaty action (such as signature, ratification, acceptance of an amendment, etc.), in the depositary practice of the Secretary-General of the United Nations, is the time when the action is undertaken with the depositary. For example, the date of effect of an instrument of ratification is the date on which the relevant instrument is deposited with the Secretary-General.

The date of effect of a treaty action by a State or an international organization is not necessarily the date that action enters into force for that State or international organization. Multilateral agreements often provide for their entry into force for a State or international organization after the lapse of a certain period of time following the date of effect.

(See annex 6.)

**interpretative declaration**

An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations, declarations merely clarify a State’s position and do not purport to exclude or modify the legal effect of a treaty.

The Secretary-General, as depositary, pays specific attention to declarations to ensure that they do not amount to reservations. Usually, declarations are made at the time of signature or at the time of deposit of an instrument of ratification, acceptance, approval or accession. Political declarations usually do not fall into this category as they contain only political sentiments and do not seek to express a view on legal rights and obligations under a treaty.

**mandatory declaration**

A mandatory declaration is a declaration specifically required by the treaty itself. Unlike an interpretative declaration, a mandatory declaration is binding on the State making it.

**optional declaration**

An optional declaration is a declaration that a treaty specifically provides for, but does not require. Unlike an interpretative declaration, an optional declaration is binding on the State making it.

**depositary**

The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969. The Secretary-General, as depositary, accepts notifications and documents related to treaties deposited with the Secretary-General, examines whether all formal requirements are met, deposits them, registers them subject to Article 102 of the *Charter of the United Nations* and notifies all relevant acts to the parties concerned. Some treaties describe depositary functions. This is considered unnecessary



in view of the detailed provision of article 77 of the Vienna Convention 1969.

A depositary can be one or more States, an international organization, or the chief administrative officer of the organization, such as the Secretary-General of the United Nations. The Secretary-General does not share depositary functions with any other depositary. In certain areas, such as dealing with reservations, amendments and interpretation, the Secretary-General's depositary practice, which has developed since the establishment of the United Nations, has evolved further since the conclusion of the Vienna Convention 1969. The Secretary-General is not obliged to accept the role of depositary, especially for treaties negotiated outside the auspices of the United Nations. It is the usual practice to consult the Treaty Section prior to designating the Secretary-General as depositary. The Secretary-General, at present, is the depositary for over 500 multilateral treaties. See articles 76 and 77 of the Vienna Convention 1969.

**depositary notification (C.N.)**

A depositary notification (sometimes referred to as a C.N. – an abbreviation for circular notification) is a formal notice that the Secretary-General sends to all Member States, non-member States, the specialized agencies of the United Nations, and the relevant secretariats, organizations and United Nations offices, as depositary of a particular treaty. The notification provides information on that treaty, including actions undertaken. Such notifications are typically distributed by e-mail on the day that they are processed. Notifications with bulky attachments are transmitted in paper form.

**entry into force**

***definitive entry into force***

Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. This may be a date specified in the treaty or a date on which a specified number of ratifications, approvals, acceptances or accessions have been deposited with the depositary. The date when a treaty deposited with the Secretary-General enters into force is determined in accordance with the treaty provisions.

***entry into force for a State***

A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force. See article 24 of the Vienna Convention 1969.

***provisional entry into force***

Provisional entry into force may be allowed by the terms of a treaty, for example, in commodity agreements. Provisional entry into force of a treaty may also occur when a number of parties to a treaty that has

not yet entered into force decide to apply the treaty as if it had entered into force. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner. See article 25(1) of the Vienna Convention 1969.

**exchange of letters or notes**

An exchange of letters or notes may embody a bilateral treaty commitment. The basic characteristic of this procedure is that the signatures of both parties appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of these letters or notes, each of the parties retaining one letter or note signed by the representative of the other party. In practice, the second letter or note (usually the letter or note in response) will reproduce the text of the first. In a bilateral treaty, the parties may also exchange letters or notes to indicate that they have completed all domestic procedures necessary to implement the treaty. See article 13 of the Vienna Convention 1969.

**filing and recording**

Filing and recording is the procedure by which the Secretariat records certain treaties that are not subject to registration under Article 102 of the *Charter of the United Nations*.

**Final Act**

A Final Act is a document summarising the proceedings of a diplomatic conference. It is normally the formal act by which the negotiating parties bring the conference to a conclusion. It is usually part of the documentation arising from the conference, including the treaty, the resolutions and interpretative declarations made by participating States. There is no obligation to sign the Final Act, but signature may permit participation in subsequent mechanisms arising from the conference, such as preparatory committees. Signing the Final Act does not normally create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.

**final clauses**

Final clauses are provisions typically found at the end of a treaty, dealing with such topics as signature, ratification, acceptance, approval, accession, denunciation, amendment, reservation, entry into force, settlement of disputes, depositary matters and authentic texts. In the case of multilateral treaties to be deposited with the Secretary-General, parties should submit for review draft final clauses to the Treaty Section well in advance of the adoption of the treaty (see section 6.5).

**full powers**

***instrument of full powers***

Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given treaty actions (see annex 3).

The Secretary-General's practice in relation to full powers may differ in certain respects from that of other depositaries. The Secretary-

General does not accept full powers transmitted by telex or powers that are not signed.

The Head of State, Head of Government and Minister for Foreign Affairs are considered as representing their State for the purpose of all acts relating to the signature of, and the consent to be bound by, a treaty. Accordingly, they need not present full powers for those purposes.

See articles 2(1)(c) and 7 of the Vienna Convention 1969.

**instrument of general full powers**

An instrument of general full powers authorises a named representative to execute certain treaty actions, such as signatures, relating to treaties of a certain kind (for example, all treaties adopted under the auspices of a particular organization).

See declaration.

See declaration.

**interpretative declaration**

**mandatory declaration**

**memorandum of understanding (M.O.U.)**

The term memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. An M.O.U. typically consists of a single instrument and is entered into among States and/or international organizations. The United Nations usually concludes M.O.U.s with Member States in order to organize its peacekeeping operations or to arrange United Nations conferences. The United Nations also concludes M.O.U.s regarding cooperation with other international organizations. The United Nations considers M.O.U.s to be binding and registers them if submitted by a party or if the United Nations is a party.

**modification**

Modification, in the context of treaty law, refers to the variation of certain provisions of a treaty only as between particular parties to that treaty. As between other parties, the original provisions apply. If a treaty is silent as to modifications, they are allowed only to the extent that they do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and purpose of the treaty. See article 41 of the Vienna Convention 1969.

**Monthly Statement**

The Monthly Statement is the statement published by the United Nations Secretariat on a monthly basis detailing the treaties and international agreements registered or filed and recorded during the preceding month (see section 5.7.4).

See treaty.

**multilateral treaty**

See declaration.

**optional declaration**

**party**

A party to a treaty is a State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law. See article 2(1)(g) of the Vienna Convention 1969.

**plenipotentiary**

A plenipotentiary, in the context of full powers, is the person authorised by an instrument of full powers to undertake a specific treaty action.

**protocol**

A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times States have negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.

**provisional application**

**provisional application of a treaty that has entered into force**

Provisional application of a treaty that has entered into force may occur when a State unilaterally undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis. The State would generally intend to ratify, accept, approve or accede to the treaty once its domestic procedural requirements for international ratification have been satisfied. The State may terminate this provisional application at any time. In contrast, a State that has consented to be bound by a treaty through ratification, acceptance, approval, accession or definitive signature generally can only withdraw its consent in accordance with the provisions of the treaty or, in the absence of such provisions, other rules of treaty law. See article 24 of the Vienna Convention 1969.

**provisional application of a treaty that has not entered into force**

Provisional application of a treaty that has not entered into force may occur when a State notifies the signatory States to a treaty that has not yet entered into force that it will give effect to the legal obligations specified in that treaty on a provisional and unilateral basis. Since this is a unilateral act by the State, subject to its domestic legal framework,

it may terminate this provisional application at any time. A State may continue to apply a treaty provisionally, even after the treaty has entered into force, until the State has ratified, approved, accepted or acceded to the treaty. A State's provisional application terminates if that State notifies the other States among which the treaty is being applied provisionally of its intention not to become a party to the treaty. See article 25 of the Vienna Convention 1969.

**provisional entry into force**

**ratification, acceptance, approval** Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Ratification, acceptance and approval all require two steps:

- (a) The execution of an instrument of ratification, acceptance or approval by the Head of State, Head of Government or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant treaty; and
- (b) For multilateral treaties, the deposit of the instrument with the depository; and for bilateral treaties, the exchange of the instruments between parties.

The instrument of ratification, acceptance or approval must comply with certain international legal requirements (see section 3.3.5 and annex 4).

Ratification, acceptance or approval at the international level indicates to the international community a State's commitment to undertake the obligations under a treaty. This should not be confused with the act of ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions, before it consents to be bound internationally. Ratification at the national level is inadequate to establish the State's consent to be bound at the international level.

See articles 2(1)(b), 11, 14 and 16 of the Vienna Convention 1969.

**registration** Registration, in the context of treaty law and practice, refers to the function of the Secretariat of the United Nations in effecting the registration of treaties and international agreements under Article 102 of the *Charter of the United Nations* (see section 5).

**reservation** A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in. States can make reservations to a treaty

when they sign, ratify, accept, approve or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. Since a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government or Minister for Foreign Affairs (see annex 6). Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations. See articles 2(1)(d) and 19-23 of the Vienna Convention 1969.

**revision/ review**

Revision/review basically means amendment. However, some treaties provide for revisions/reviews separately from amendments (see, e.g., Article 109 of the *Charter of the United Nations*). In that case, revision/ review typically refers to an overriding adaptation of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.

**signature**

**definitive signature (signature not subject to ratification)**

Definitive signature occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval. A State may definitively sign a treaty only when the treaty so permits. A number of treaties deposited with the Secretary-General permit definitive signature. See article 12 of the Vienna Convention 1969.

**simple signature (signature subject to ratification)**

Simple signature applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves it. In that case, a State that signs a treaty is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Signature alone does not impose on the State obligations under the treaty. See articles 14 and 18 of the Vienna Convention 1969.

**treaty**

Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons. Thus, treaties may be concluded between:

- (a) States;
- (b) International organizations with treaty-making capacity and States; or
- (c) International organizations with treaty-making capacity.

The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law.

The Vienna Convention 1969 defines a treaty as "an international

agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (article 2(1)(a)). Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form.

Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements.

No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity.

See article 2(1)(a) of the Vienna Convention 1969. See generally Vienna Convention 1969 and Vienna Convention 1986.

***Bilateral treaty***

A bilateral treaty is a treaty between two parties.

***Multilateral treaty***

A multilateral treaty is a treaty between more than two parties.





# **FINAL CLAUSES OF MULTILATERAL TREATIES**

**Final Clauses of Multilateral Treaties  
Handbook**

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## **HANDBOOK**

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United Nations

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## Foreword

In its resolution 36/112 of 10 December 1981 on the “Review of the multilateral treaty-making process”, the General Assembly of the United Nations emphasized the importance of multilateral treaties as a primary source of international law. At the same time, it recognized the burden that multilateral treaty-making places upon Governments, the United Nations and the international community in general. Against this background, the Assembly requested the Secretary-General of the United Nations, *inter alia*, to prepare and publish a new edition of the Handbook of Final Clauses, taking into account relevant new developments and practices in that respect. The previous edition had been published in 1957.

Unfortunately, due to serious resource constraints, the Secretariat of the United Nations was not in a position to act on this request for many years. However, the need for a new edition of the Handbook remained. It has now finally become possible to fulfil the request of the General Assembly.

This new edition of the Handbook has been prepared by the Treaty Section of the United Nations Office of Legal Affairs, which discharges the depositary functions of the Secretary-General of the United Nations under multilateral treaties. The Handbook incorporates recent developments in the practice of the Secretary-General as depositary of multilateral treaties with regard to matters normally included in the final clauses of these treaties. Many of these developments reflect considered responses by the Office of Legal Affairs of the United Nations to concerns expressed by the international community.

The Handbook is a practical guide, intended to assist those who are directly involved in multilateral treaty-making. In particular, its purpose is to help States with scarce resources and limited technical proficiency in treaty law and practice to participate fully in the multilateral treaty-making process.

Provisions of multilateral treaties deposited with the Secretary-General of the United Nations are quoted in full in the Handbook. Additional examples are provided in footnotes. Finally, patterns are set and good practices recommended.

In addition to paper copies of this Handbook, an electronic copy is available at the United Nations web site at <http://untreaty.un.org>.

Users of this Handbook are encouraged to contact the Treaty Section of the Office of Legal Affairs by e-mail at [treaty@un.org](mailto:treaty@un.org) with any comments or questions.



Further useful information is available in the *Treaty Handbook* which is also available at <http://untreaty.un.org>

## FINAL CLAUSES OF MULTILATERAL TREATIES HANDBOOK



Hans Corell  
Under-Secretary-General for Legal Affairs  
The Legal Counsel

### Explanatory note

United Nations General Assembly resolution 36/112 of 10 December 1981 requested the Secretary-General of the United Nations to prepare a new Handbook of Final Clauses. The Treaty Section of the United Nations published the last edition of the Handbook of Final Clauses in 1957.

The purpose of the present Handbook is to provide an updated reference tool for drafting final clauses of multilateral treaties, taking into account new developments, including the practice of the Secretary-General of the United Nations as depository of multilateral treaties. It is important to note that the practice of the Secretary-General of the United Nations in this regard has evolved in certain respects in the past few years. For example, on 28 August 2001, the Secretary-General of the United Nations promulgated the bulletin "Procedures to be followed by departments, offices and regional commissions of the United Nations with regard to treaties and international agreements" that reflects some of these developments (see Annex: ST/SGB/2001/7). In section 4.2 of this bulletin the Secretary-General of the United Nations expressly states that, in the case of treaties and multilateral agreements to be deposited with him, "[d]raft final clauses of such treaties and international agreements shall be submitted by the relevant department, office or regional commission to the Treaty Section of the United Nations for review and comment prior to finalization."

In the present Handbook, the term "treaty" means a multilateral agreement. Unless the context otherwise indicates, the term "State" may also apply to an international organization or any other entity that is entitled, under the provisions of the treaty, to become party thereto. The treaties discussed in this Handbook are almost exclusively multilateral treaties deposited with the Secretary-General of the United Nations. Since over 500 multilateral treaties are deposited with the Secretary-General of the United Nations, precedents and practices established by and in relation to those treaties have had an important influence in developments in this area.

*Treaty Handbook* in this publication refers only to the version reprinted in 2002 and the electronic version available on the Internet.

It is noted that the *Vienna Convention on the Law of Treaties, 1969*, is primarily concerned with treaties between States (article 1), and treaties which are constitutive instruments of international organizations and treaties adopted within

an international organization (article 5). The *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986*<sup>1</sup>, deals with treaties between one or more States and one or more international organizations, and treaties between international organizations.

This Handbook follows the order in which the final clauses most frequently appear in multilateral treaties deposited with the Secretary-General of the United Nations.

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<sup>1</sup> Not yet in force.

## INTRODUCTION

A multilateral treaty may be drafted in different forms. However, the common practice is for a treaty to consist of one instrument that is comprised of a title, preamble, main text, final clauses, testimonium and signature block, and annexes (if appropriate). The final clauses of a multilateral treaty generally include articles on the settlement of disputes, amendment and review, the status of annexes, signature, ratification, accession, entry into force, withdrawal and termination, reservations, designation of the depositary, and authentic texts. In addition, articles may be included that address the relationship of the treaty to other treaties, its duration, provisional application, territorial application, and registration.

Once adopted, a multilateral treaty produces certain legal effects. Even if the treaty has not yet entered into force, some of its provisions, in particular the final clauses, are, by their nature and objective, immediately applicable (provisions on modalities of authentication of the text, establishment of the consent of States to be bound by the treaty, entry into force, reservations, functions of the depositary, etc.). These become applicable to the functions of the depositary. As article 24 (4) of the *Vienna Convention on the Law of Treaties, 1969*, states:

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of adoption of its text.

From a technical point of view, the drafting of final clauses has undergone a number of changes and refinements over the years and these are reflected in this publication. Treaty law has gained in precision with these developments. The views expressed by the Secretary-General of the United Nations as depositary of multilateral treaties have had a significant impact on these developments.

In general, the final clauses of a treaty relate to procedural aspects rather than to substantive aspects of the treaty. However, well-drafted final clauses allow for the easy operation of the treaty and facilitate implementation by the parties and the depositary. They can have a significant impact on substance as well. Accordingly, precision in drafting the final clauses becomes important.

## I. CONCLUSION OF TREATIES

### A. ADOPTION AND AUTHENTICATION OF THE TEXT OF A TREATY

The adoption and authentication of an agreed text constitute the successful outcome of a treaty negotiation process.

In accordance with customary international law, as codified by the *Vienna Convention on the Law of Treaties, 1969* (hereinafter the “Vienna Convention, 1969”), the text of a multilateral treaty may be adopted by consensus of all States participating in the negotiations or voted upon by the appropriate body at an international conference. In the latter case, where the States have not agreed on a voting rule for that body, a treaty at an international conference is deemed to be adopted by the votes of two-thirds of the States present and voting, unless, by the same majority, they decide to apply a different rule (see article 9 of the *Vienna Convention, 1969*).

Once adopted, the text of a treaty is settled. The adopted text requires authentication. Authentication may occur in several ways (see article 10 of the *Vienna Convention, 1969*): for example, by signing *ad referendum* (affixing the signature of the representatives of those States participating in the negotiation of the text, subject to further confirmation by their governments) or by initialling the treaty or the Final Act incorporating the adopted text (affixing the initials of the negotiators) or by adopting the text by a resolution of the relevant body. The General Assembly of the United Nations (hereinafter the “General Assembly”) has adopted by resolution texts negotiated under the auspices of bodies established by it on many occasions. Signature of the original of the treaty may be the mechanism used for authentication of the text of the treaty.

### B. THE DEPOSITARY

In the past, when a multilateral treaty provided for its subsequent ratification, accession, etc., the States concerned, as in the case of bilateral agreements, exchanged the appropriate instruments. But the proliferation of multilateral treaties and the increase in the number of parties have resulted in the development of the institution of the depositary.

Initially, only States were depositaries. Then, particularly since the establishment of the League of Nations and later, the United Nations and its specialized agencies, international organizations have been increasingly entrusted with depositary functions. The Secretary-General of the United Nations (hereinafter

the “Secretary-General”) is the depositary of over 500 multilateral treaties spanning the spectrum of human activity.

The depositary of a treaty is any State, organization or institution to whom the custody of that treaty is entrusted. The functions of the depositary are elaborated in articles 76 and 77 of the *Vienna Convention, 1969*.

(See also paragraphs 9 to 37 of the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (hereinafter the “*Summary of Practice*”),<sup>3</sup> and sections 2 and 6 of the *Treaty Handbook* prepared by the Treaty Section of the United Nations (hereinafter the “Treaty Section”).

## 1. Designation of the depositary

**a.** Normally, the treaty itself clearly designates the depositary in a separate provision. For the sake of clarity and certainty this would clearly be the preferred approach. The *Stockholm Convention on Persistent Organic Pollutants, 2001*, provides in article 29:

### Depositary

The Secretary-General of the United Nations shall be the depositary of this Convention.<sup>3</sup>

Also article 53 of the *International Cocoa Agreement, 2001*, states:

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.<sup>4</sup>

**b.** Some treaties have adopted a more indirect approach to designating the depositary. The *International Convention for the Suppression of the Financing of Terrorism, 1999*, provides in article 28:

The original of this Convention, of which the Arabic, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.<sup>5</sup>

A parenthetical reference to the depositary (which is not recommended) is found in the *Terms of Reference of the International Copper Study Group, 1989*. Article 22(a) provides:

### Entry into force

22. (a) These terms of reference shall enter into force definitively when States together accounting for at least 80 per cent of trade in copper, as set out in the annex to these terms of reference, have notified the Secretary-General of the United Nations (hereinafter referred to as “the depositary”) pursuant to subparagraph (c) below of their definitive acceptance of these terms of reference.

The articles providing for ratification, accession and entry into force may also refer to the deposit of instruments with the depositary. The *Agreement Establishing the Terms of Reference of the International Jute Study Group, 2001*, article 23 (a) reads:

### Entry into force

(a) These Terms of Reference shall enter into force when States, the European Community or any intergovernmental organization referred to in paragraph 5 above together accounting for 60 per cent of trade (imports and exports combined) in jute and jute products, as set out in Annex A to these Terms of Reference, have notified the Secretary-General of the United Nations (hereinafter referred to as “the depositary”) pursuant to subparagraph (b) below of their provisional application or definitive acceptance of these Terms of Reference.

The *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000*, states, in article 21 (3) and (4):

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one

<sup>2</sup> ST/LEG/7 Rev.1.

<sup>3</sup> See also the *Convention on the Rights of the Child, 1989* (article 53); the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998* (article 29); the *International Convention on Arrest of Ships, 1999* (article 11); and the *United Nations Convention Against Transnational Organized Crime, 2000* (article 41).

<sup>4</sup> See also the *Food Aid Convention, 1999* (article XXI).

<sup>5</sup> See, for a similar provision, the *International Coffee Agreement, 2000* (article 55).



member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

## 2. Transfer of depositary functions

Depositary functions initially entrusted to one depositary have occasionally been transferred subsequently to another depositary. For example, the functions exercised by the French Government under the *International Agreement for the Suppression of the White Slave Traffic* and the *International Convention for the Suppression of the White Slave Traffic, both of 1910*, and the *Agreement for the Repression of Obscene Publications, 1910*, were transferred to the Secretary-General in accordance with Economic and Social Council resolution 82 (V) of 14 August 1947.

## 3. Joint depositaries

Exceptionally, several depositaries are designated as joint depositaries. Article IX (2) of the *Treaty on the Non-Proliferation of Nuclear Weapons, 1968*, reads:

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

During the cold war, this approach was adopted in certain treaties where the negotiating parties sought universal participation but were unable to acknowledge certain governments for political reasons.

The *Convention on the Privileges and Immunities of the Specialized Agencies, 1947*, in section 42 provides for the deposit of instruments, either with the Secretary-General or with the head of the relevant agency:

Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members that are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-

General of the United Nations or with the executive head of the specialized agency.

In practice, the only time the provision in the *Convention on the Privileges and Immunities of the Specialized Agencies, 1947*, was applied was when Nepal, prior to becoming a member of the United Nations, deposited an instrument in respect of the World Health Organization.

The Secretary-General has since taken the view that such a joint exercise of depositary functions was not desirable since, apart from the duplication of work, it might also lead to unnecessary complications resulting from possible differences in the depositary practices. Consistent with this approach, the Secretary-General refuses to be designated as co-depositary. In ST/SGB/2001/7, section 6.1, states:

When it is intended that the Secretary-General discharge the depositary functions relating to treaties and international agreements, such treaties or international agreements shall confer the depositary functions on the Secretary-General only and not on any other official of the United Nations. The Secretary-General shall not be designated as a co-depositary.

(See also paragraphs 15 to 19 of the *Summary of Practice*.)

## 4. Designation of the Secretary-General of the United Nations as depositary

When it is intended that the Secretary-General be designated the depositary of a treaty, the Treaty Section should be consulted as soon as possible once the negotiations on the relevant multilateral treaty have commenced. The Secretary-General's acceptance of depositary functions is not automatic. He must be able to assume this role in the case of a particular treaty consistent with the considerations elaborated in ST/SGB/2001/7 and his practice as depositary of multilateral treaties.

In principle, the Secretary-General's policy is to accept the role of depositary for:

- (a) open multilateral treaties of worldwide interest, usually adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations; and

(b) treaties negotiated under the auspices of the United Nations regional commissions.<sup>6</sup>

The reasons for this policy include: (a) the inability of the Secretary-General to accept the role of depositary for all multilateral treaties due to limited staff and other resources; (b) the United Nations should not replace the other specialized agencies and other international organizations as depositary of multilateral treaties concerning their specialized fields; (c) in the case of restricted multilateral treaties where the depositary responsibilities are so closely linked to the application of the substantive clauses that they could hardly be exercised by an entity other than a party to the treaty or an organ established by the treaty; (d) considerations relating to United Nations policies; (e) the precedent that would be set; and (f) it might create the impression that the Secretary-General would perform the role of depositary in each such case.

## 5. Functions of the depositary

a. Articles 76 and 77 of the *Vienna Convention, 1969*, provide that:

### 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

<sup>6</sup> Although it is unusual for the Secretary-General to accept the role of depositary for a treaty that does not fall within this framework, exceptions do exist. See the *Agreement on Succession Issues, 2001*, among Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia and the Federal Republic of Yugoslavia (today, Serbia and Montenegro). This Agreement was accepted in deposit on an exceptional basis, taking into consideration the political circumstances of that time, including:

- (a) the *Agreement on Succession Issues, 2001*, was negotiated under the auspices the United Nations and as part of a coherent United Nations-led effort to bring stability to the region;
- (b) during its negotiation process, the Office of Legal Affairs of the United Nations was consulted extensively;
- (c) the political significance of the treaty; and
- (d) the enormous investment that the United Nations and the international community made to achieve peace in the Balkan region.

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.

**b.** Some treaties designate the depositary and have specified in detail the functions of the depositary. Article 20 of the *Vienna Convention on the Protection of the Ozone Layer, 1985*, states:

Depositary

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any protocols.

2. The Depositary shall inform the Parties, in particular, of:

- (a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 13 and 14;
- (b) The date on which the Convention and any protocol will come into force in accordance with article 17;
- (c) Notifications of withdrawal made in accordance with article 19;
- (d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with article 9;
- (e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with article 10;
- (f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof;
- (g) Declarations made in accordance with article 11, paragraph 3.

The inclusion of a provision of this nature, listing the functions of the depositary (or some of them), is superfluous, in view of the provisions of the *Vienna Convention, 1969*, and established practice, unless, of course, additional duties are added. It could also give rise to misinterpretations. The Secretary-General discourages negotiating parties from adding new duties inconsistent with his role as depositary. Since the depositary functions are well established and codified in article 77 of the *Vienna Convention, 1969*, it is adequate simply to designate a depositary. It would be understood that the duties would be performed in accordance with treaty law and established practice.

**6. Limits of the functions of the Secretary-General of the United Nations as depositary**

The responsibility of the Secretary-General, as depositary, should be limited to his established depositary functions and should not include administrative duties that may be performed by the Secretary-General in a different capacity.

Some treaties assign administrative functions to the Secretary-General that are not depositary functions *stricto sensu*. See the provisions on the transmittal to the parties of communications concerning the final outcome of proceedings brought in respect of crimes under article 2 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973*. These functions are, in actual fact, performed by an administrative unit in the Secretariat of the United Nations (hereinafter the "Secretariat"), in this case the Office of Legal Affairs, and not by the Secretary-General, in his capacity as depositary.

Similarly, other units of the Secretariat are responsible for dealing with communications under various conventions. The Division for the Advancement of Women plays an important role in assisting States Parties to fulfil their reporting requirements under the Committee on the Elimination of Discrimination against Women created under article 17 of the *Convention on the Elimination of Discrimination against Women, 1979*. The Division for the Advancement of Women also aids the Committee by researching substantive matters, disseminating information, and establishing functional procedures.

The *United Nations Convention on the Law of the Sea, 1982*, requires the Secretary-General to perform a mix of depositary and administrative functions. Following internal consultations within the Secretariat, it has been agreed that the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs would perform the administrative functions under this Convention while the Treaty Section would perform the depositary functions.

In the case of the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, 1998*, the Legal Counsel of the United Nations took the view that the notification functions for both the Compendium of Candidate Global Technical Regulations and the Registry of Global Technical Regulations created by this Agreement constituted administrative functions related to the implementation of the Agreement and not depositary functions. Accordingly, the Secretary-General could only undertake such administrative responsibilities in his capacity as the chief administrative officer of the Organization and not as the depositary. In accordance with Secretary-General's bulletin ST/SGB/1998/3, entitled "Organization of the Secretariat of the



Economic Commission for Europe”, such administrative functions should be performed by the Secretariat of the Economic Commission for Europe.

### C. PARTICIPATION IN MULTILATERAL TREATIES

Treaties generally specify in their final clauses the categories of States, organizations or other entities that may become a party thereto. The *United Nations Convention on the Law of the Sea, 1982*, lists in article 305 the entities that may become parties to the Convention and contains an annex concerning participation by international organizations. Articles 305 (1), 306 and 307 read:

Article 305

Signature

1. This Convention shall be open for signature by:

- (a) all States;
- (b) Namibia, represented by the United Nations Council for Namibia;<sup>7</sup>
- (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

<sup>7</sup> The Council for Namibia was established as a subsidiary organ of the General Assembly by resolution 2248 (S-V) of 19 May 1967. Unlike other subsidiary organs, the Council functioned in a dual capacity: as a policy-making organ of the General Assembly and as the legal Administering Authority of a Trust Territory. This latter characteristic of the Council distinguished it from other United Nations subsidiary organs. As the legal Administering Authority, the Council was expressly endowed by the General Assembly with certain competences and functions to be exercised on behalf of Namibia in terms comparable to that of a Government, *inter alia*, to represent Namibia internationally. Even though South Africa exercised de facto control over the Territory, the Council had the *de jure* competence to enact any necessary laws and recognitions. Indeed, the Council became a party to many treaties deposited with the Secretary-General, such as the *United Nations Convention on the Law of the Sea, 1982*, and the constituent acts of the Food and Agriculture Organization, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization. By resolution S-18/1 of 23 April 1990 the General Assembly admitted Namibia to membership in the United Nations.

(e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(f) international organizations, in accordance with annex IX.

Article 306

Ratification and formal confirmation

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph 1(b), (c), (d) and (e), and to formal confirmation, in accordance with Annex IX, by the entities referred to in article 305, paragraph 1(f). The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 307

Accession

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by the entities referred to in article 305, paragraph 1(f), shall be in accordance with Annex IX. The instruments of accession shall be deposited with the Secretary-General of the United Nations.<sup>8</sup>

### 1. The “all States formula”

Treaties may be open to participation by “all States” or “any State”. The “all States formula” has been used often in multilateral treaties that seek universal participation (see those treaties relating to disarmament, human rights, penal matters and environment.)

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, article 15, provides:

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December

<sup>8</sup> See also for similar wording the *Vienna Convention on Consular Relations, 1963* (articles 74 through 76).



1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.<sup>9</sup>

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990, article 86, states:

1. The present Convention shall be open for signature by all States. It is subject to ratification.
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.<sup>10</sup>

The *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, 1973, specifies in articles 14 to 16 that:

#### Article 14

This Convention shall be opened for signature by all States, until 31 December 1974, at United Nations Headquarters in New York.

#### Article 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 16

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-

<sup>9</sup> See also the *Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques*, 1976 (article 9); the *Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II, and III)*, 1980 (article 3); the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, 1992 (article 18); and the *Comprehensive Nuclear-Test-Ban Treaty*, 1996 (article 11).

<sup>10</sup> See also the *International Convention on the Suppression and Punishment of the Crime of Apartheid*, 1973 (article 13); the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 (article 25); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (article 25); the *International Convention against Apartheid in Sports*, 1985 (article 16); the *Convention on the Rights of the Child*, 1989 (article 46); and *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990 (article 86).

General of the United Nations.<sup>11</sup>

The *Stockholm Convention on Persistent Organic Pollutants*, 2001, article 24 provides:

This Convention shall be open for signature at Stockholm by all States and regional economic integration organizations on 23 May 2001, and at the United Nations Headquarters in New York from 24 May 2001 to 22 May 2002.<sup>12</sup>

The “all States formula” has its drawbacks as it has given rise to the question whether certain territories or entities whose status as sovereign States was unclear would be permitted to participate in a treaty under this formula.

#### *Practice of the Secretary-General*

The Secretary-General, as depositary, stated on a number of occasions that it would fall outside his competence to determine whether a territory or other such entity would fall within the “any State” or “all States” formula.<sup>13</sup>

On 14 December 1973, the General Assembly issued a general understanding<sup>14</sup> stating that:

The Secretary-General, in discharging his functions as a depositary of a convention with an ‘all States’ clause, will follow the practice of the Assembly in implementing such a clause and, whenever advisable, will request the opinion of the Assembly before receiving a signature or an instrument of ratification or accession.<sup>15</sup>

Since 1973 the General Assembly has, on occasion, given guidance on whether it considered a particular territory or entity a State.<sup>16</sup>

<sup>11</sup> See also the *International Convention against the taking of hostages*, 1979 (article 17); the *International Convention Against the Recruitment, Use, Financing and Training of Mercenaries*, 1989 (article 18); the *Convention on the Safety of United Nations and Associated Personnel*, 1994 (article 24); the *International Convention for the Suppression of Terrorist Bombings*, 1997 (article 21); the *Rome Statute of the International Criminal Court*, 1998 (article 125); the *International Convention for the Suppression of the Financing of Terrorism*, 1999 (article 25); the *United Nations Convention against Transnational Organized Crime*, 2000 (article 36); and *Agreement on the Privileges and Immunities of the International Criminal Court*, 2002 (article 34).

<sup>12</sup> See also the *Convention on Biological Diversity*, 1992 (article 33); and the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, 1998 (article 24).

<sup>13</sup> *Official Records of the General Assembly, Eighteenth Session*, 1258th plenary meeting (A/PV.1258).

<sup>14</sup> *Official Records of the General Assembly, Twenty-eighth Session, Supplement No.30 (A/9030)*.

<sup>15</sup> See *United Nations Juridical Yearbook, 1973* (United Nations publication, Sales No. E.75.V.1), p. 79, note 9, and *ibid.*, 1974 (United Nations publication, Sales No. E.76.V.1), p. 157.

<sup>16</sup> See resolution 3067 (XXVIII) of 16 November 1973 in relation to Guinea-Bissau and the Democratic Republic of Viet-Nam.

The Secretary-General follows the advice of the General Assembly when he receives instruments relating to a treaty from an entity whose claim to being a State raises questions for the United Nations. It is not uncommon for the Secretariat (the appropriate unit would be the Office of Legal Affairs) to be consulted by negotiating parties when a difficulty in this respect is anticipated. Given the requirements of ST/SGB/2001/7, the Office of Legal Affairs is now in a position to draw the attention of the negotiating parties to any likely difficulty in this regard.

For example, regarding the Taiwan Province of China, the Secretary-General follows the General Assembly's guidance incorporated in resolution 2758 (XXVI) of the General Assembly of 25 October 1971 on the restoration of the lawful rights of the People's Republic of China in the United Nations. The General Assembly decided to recognize the representatives of the Government of the People's Republic of China as the only legitimate representatives of China to the United Nations. Hence, instruments received from the Taiwan Province of China will not be accepted by the Secretary-General in his capacity as depositary.

(See also paragraphs 81 to 87 of the *Summary of Practice*.)

## 2. The "Vienna formula"

The "Vienna formula" was developed to overcome the uncertainties of the "all States formula". The "Vienna formula" attempts to identify in detail the entities eligible to participate in a treaty. The "Vienna formula" permits participation in a treaty by Member States of the United Nations, Parties to the Statute of the International Court of Justice and States Members of specialized agencies or, in certain cases, by any other State invited by the General Assembly to become a party.

During the cold war, in the case of treaties open to "all States", certain differences arose over whether certain entities were to be recognized as States and whether they had the capability of becoming parties to a treaty.<sup>17</sup> To avoid such disputes essentially based on cold war politics, the "Vienna formula" was employed in many treaties. For technical reasons some States, which were not members of the United Nations, were allowed to be members of the United Nations specialized agencies. However, since the General Assembly adopted the general understanding of 14 December 1973, this practice became unnecessary (see "all States formula" above). The *Vienna Convention, 1969*, stipulates in articles 81 to 83:

### Article 81

#### Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention.[...]

### Article 82

#### Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### Article 83

#### Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

See also the *United Nations Framework Convention on Climate Change, 1992*, article 20:

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

Since 1992 the situation of the Federal Republic of Yugoslavia posed difficulties with respect to its participation in the United Nations and in multilateral treaties. The application of the "Vienna formula" in relation to the *United Nations Framework Convention on Climate Change, 1992*, was a case in point (see below "The Federal Republic of Yugoslavia").

<sup>17</sup> Examples include the German Democratic Republic, North Korea and North Vietnam.

### 3. The Federal Republic of Yugoslavia (as of 4 February 2003 “Serbia and Montenegro”)

The former Socialist Federal Republic of Yugoslavia (hereinafter the “former Yugoslavia”) was an original Member of the United Nations, the Charter having been signed and ratified on its behalf on 26 June 1945, and 19 October 1945, respectively. The following republics constituting the former Yugoslavia declared their independence on the dates indicated: Slovenia (25 June 1991), the former Yugoslav Republic of Macedonia (17 September 1991), Croatia (8 October 1991), and Bosnia and Herzegovina (6 March 1992). The Federal Republic of Yugoslavia (hereinafter “Yugoslavia”) came into being on 27 April 1992 following the promulgation of its constitution on that day. Yugoslavia nevertheless advised the Secretary-General on 27 April 1992 that it would continue the international legal personality of the former Yugoslavia. Yugoslavia accordingly claimed to be a member of those international organizations of which the former Yugoslavia had been a member. It also claimed that all those treaty acts that had been performed by the former Yugoslavia were directly attributable to it, as being the same State.<sup>18</sup> Bosnia and Herzegovina, Croatia, Slovenia and the Former Yugoslav Republic of Macedonia, all of which had applied for and were admitted to membership in the United Nations, in accordance with Article 4 of the Charter<sup>19</sup>, objected to this claim.

The General Assembly, in its resolution 47/1 of 22 September 1992, acting upon the recommendation contained in the Security Council resolution 777 of 19 September 1992, considered that Yugoslavia could not continue automatically the membership of the former Yugoslavia in the United Nations, and decided that it should accordingly apply for membership in the Organization. It also decided that Yugoslavia could not participate in the work of the General Assembly. The Legal Counsel took the view, however, that this resolution of the General Assembly neither terminated nor suspended the membership of the former Yugoslavia in the United Nations. At the same time, the Legal Counsel expressed the view that the admission of a new Yugoslavia to membership in the United Nations, in accordance with Article 4 of the Charter of the United Nations, would terminate the situation that had been created by General Assembly resolution 47/1.<sup>20</sup> General Assembly resolution 47/1 did not specifically address the question of the status of either the former Yugoslavia or of Yugoslavia with regard to multilateral treaties that were deposited with the Secretary-General. The Legal Counsel took the view in this regard that the Secretary-General was not in a position, as depositary, either to reject or to disregard the claim of Yugoslavia that it continued the legal personality of the former Yugoslavia, absent any decision to

the contrary either by a competent organ of the United Nations directing him in the exercise of his depositary functions, or by a competent treaty organ created by a treaty, or by the contracting States to a treaty directing him in the exercise of his depositary functions with regard to that particular treaty, or by a competent organ representative of the international community of States as a whole on the general issue of continuity and discontinuity of statehood to which the claim of Yugoslavia gave rise.

Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, the Secretary-General, as depositary, continued to list treaty actions that had been performed by the former Yugoslavia in status lists in the publication *Status of Multilateral Treaties Deposited with the Secretary-General*<sup>21</sup> using for that purpose the short-form name “Yugoslavia”, which was used at that time to refer to the former Yugoslavia. Between 27 April 1992 and 1 November 2000, Yugoslavia undertook numerous treaty actions with respect to treaties deposited with the Secretary-General. Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, these treaty actions were also listed in status lists against the name “Yugoslavia”. Accordingly, the Secretary-General, as depositary, did not make any differentiation in the above-mentioned publication between treaty actions that were performed by the former Yugoslavia and those that were performed by Yugoslavia, both categories of treaty actions being listed against the name “Yugoslavia”. The General Assembly admitted Yugoslavia to membership by its resolution 55/12 on 1 November 2000. At the same time, Yugoslavia renounced its claim to have continued the international legal personality of the former Yugoslavia.

The issue of the participation of Yugoslavia in a treaty containing the “Vienna formula” arose in the case of the *United Nations Framework Convention on Climate Change, 1992*. The Federal Republic of Yugoslavia signed this Convention on 8 June 1992, before the adoption of General Assembly resolution 47/1. Since the Secretary-General, as depositary, is guided in matters of representation and status of States and other entities by the decisions of competent United Nations organs, in view of the absence of such a decision until the adoption of resolution 47/1, he maintained the status quo with respect to Yugoslavia in the United Nations and its participation in United Nations activities. On this basis, during the Rio Conference on Environment and Development, the signature of Yugoslavia was accepted, consistent with article 20 of the Convention.<sup>22</sup> The acceptance on 3 September 1997 of the deposit by Yugoslavia of an instrument of ratification of the *United Nations Framework Convention on Climate Change, 1992*, was based on the interpretation of General Assembly resolution 47/1. Accordingly, in light of the Legal Counsel’s view that

<sup>18</sup> S/23877 and A/46/915.

<sup>19</sup> See General Assembly resolutions 46/237 adopted on 22 May 1992, 46/238 adopted on 22 May 1992, 46/236 adopted on 22 May 1992, and 47/225 adopted on 8 April 1993.

<sup>20</sup> A/47/485.

<sup>21</sup> ST/LEG/SER.E/21, status as at 31 December 2002.

<sup>22</sup> Several participants in the Conference reserved their positions as to the status of Yugoslavia and its participation in the Conference.



General Assembly resolution 47/1 had not terminated or suspended Yugoslavia's membership in the United Nations, the Secretary-General, as depositary, accepted in deposit this instrument of ratification pursuant to article 22 of the *United Nations Framework Convention on Climate Change, 1992*.

Following the admission of Yugoslavia to the United Nations on 1 November 2000 and the renunciation by Yugoslavia of its claim to continue the international legal personality of the former Yugoslavia, a review was undertaken of the multilateral treaties deposited with the Secretary-General, in relation to many of which the former Yugoslavia and Yugoslavia had undertaken a range of treaty actions. Four categories of treaty actions were identified:

- a. Treaty actions undertaken by the former Yugoslavia prior to 27 April 1992;<sup>23</sup>
- b. Treaty actions undertaken by Yugoslavia between 27 April 1992 and 1 November 2000, pursuant to its previous claim to continue the legal personality of the former Yugoslavia;
- c. Treaty actions undertaken by Yugoslavia in its own right, and not dependent on prior treaty actions by the former Yugoslavia; and
- d. Treaty actions undertaken by Yugoslavia which require membership in the United Nations or a specialized agency as an essential precondition.

The Legal Counsel advised Yugoslavia, following its admission to the United Nations, to undertake specific measures with regard to its status relating to treaties deposited with the Secretary-General. Accordingly:

1. Yugoslavia could succeed to treaty actions undertaken by the former Yugoslavia prior to 27 April 1992;
2. It could also succeed to those treaties to which the former Yugoslavia was a party, and in relation to which Yugoslavia had undertaken subsequent treaty actions. In such cases, Yugoslavia undertook the relevant actions between 27 April 1992 and 1 November 2000. In the process of indicating its succession to a particular treaty, Yugoslavia would also have to confirm the subsequent related actions undertaken during the period of 27 April 1992 to 1 November 2000;

3. Treaty actions undertaken by Yugoslavia in its own right, and not dependent on prior treaty actions by the former Yugoslavia between 27 April 1992 and 1 November 2000 did not need further action; and

4. Treaty actions undertaken by Yugoslavia requiring membership in the United Nations or a specialized agency as an essential precondition needed to be confirmed on a case-by-case basis.

In the case of the *United Nations Framework Convention on Climate Change, 1992*, the issue arose as to whether the signature on 8 June 1992 and ratification on 3 September 1997 by Yugoslavia could be sustained. The Secretary-General took the view that he could not recognize these actions since Yugoslavia was not considered to have been a member of the United Nations or the specialized agencies at the time the actions in question were undertaken. Accordingly, these actions were voided and Yugoslavia deposited an instrument of accession to the *United Nations Framework Convention on Climate Change, 1992*, on 12 March 2001.<sup>24</sup>

#### 4. International organizations

The *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986* (hereinafter the "Vienna Convention, 1986") in essence codified the practice of international organizations participation in treaties. Such participation primarily depends, as for States, upon the relevant provisions of the treaty.

a. Certain treaties cannot be implemented by international organizations by reason of their nature and the absence of competence in respect of the subject matter of those treaties. Accordingly, negotiating parties have taken the view that such treaties would not be open to international organizations. See the human rights conventions. The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*, provides in article 25:

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

<sup>23</sup> Yugoslavia assumed responsibilities for its international relations on 27 April 1992.

<sup>24</sup> Similarly, the signature and ratification by Yugoslavia of the *Protocol extending the 1986 International Agreement on Olive Oil and Table Olives, 1993*, on 23 December 1993 was rendered null.



This formulation would prevent an international organization from becoming a party to this Convention.

- b.** In contrast, a treaty may contain provisions on participation of international organizations. In such a case, the treaty may identify the organizations that participation is open to or specify the characteristics and competencies that the organizations must possess.

The *Agreement on the Establishment of the International Vaccine Institute, 1996*, states:

Article IV

This Agreement shall be open for signature by all states and intergovernmental organizations at Headquarters of the United Nations, New York. It shall remain open for signature for a period of two years from 28 October 1996 unless such a period is extended prior to its expiry by the Depository at the request of the Board of Trustees of the Institute.

Article V

This Agreement shall be subject to ratification, acceptance or approval by the signatory states and intergovernmental organizations referred to in article IV.

The *International Coffee Agreement, 2000*, states in article 4 (3) and (4):

3. Any reference in this Agreement to a Government shall be construed as including a reference to the European Community, or any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.

4. Such intergovernmental organizations shall not itself have any votes but in the case of a vote on matters within its competence it shall be entitled to cast collectively the votes of its member States. In such cases, the Member States of such intergovernmental organizations shall not be entitled to exercise their individual voting rights.<sup>25</sup>

<sup>25</sup> See also the *United Nations Convention on the Law of the Sea, 1982* (article 305).

## 5. Regional economic integration organizations

Certain treaties, in particular those covering trade, commodities, the seas and the environment are increasingly open to participation by international organizations. Negotiating parties have specifically identified regional economic integration organizations with full or shared competencies in the subject matter covered by those treaties as capable of participation.

The definition of a regional economic integration organization encompasses two key elements: the grouping of States in a certain region for the realization of common purposes and the transfer of competencies relating to those common purposes from the members of the regional economic integration organization to the organization. The term regional economic integration organization mainly refers to the European Communities.<sup>26</sup>

The European Community, as a regional economic integration organization, has the capacity to bind its members at the level of international law and to ensure that the provisions of treaties are implemented at the domestic level in those areas that its member States have transferred competence. It also has the power to enact legislation to ensure that its obligations under a treaty are implemented without additional approvals by the legislatures of its member States. Articles III (e) and XXII (a) and (b) of the *Food Aid Convention, 1999*, provide:

Article III

(e) Subject to the provisions of Article VI, the commitment of each member shall be:

| Member                                   | Tonnage <sup>(1)</sup><br>(wheat equivalent) | Value <sup>(1)</sup><br>(millions) | Total indicative value<br>(millions) |
|--|--|------------------------------------|--------------------------------------|
| Argentina                                | 35,000                                       | -                                  | -                                    |
| Australia                                | 250,000                                      | -                                  | A\$ 90 <sup>(2)</sup>                |
| Canada                                   | 420,000                                      | -                                  | C\$ 150 <sup>(2)</sup>               |
| European Community and its member States | 1,320,000                                    | € 130 <sup>(2)</sup>               | € 422 <sup>(2)</sup>                 |
| Japan                                    | 300,000                                      | -                                  | -                                    |
| Norway                                   | 30,000                                       | -                                  | NOK 59 <sup>(2)</sup>                |
| Switzerland                              | 40,000                                       | -                                  | -                                    |
| United States of America                 | 2,500,000                                    | -                                  | US\$ 900-1,000 <sup>(2)</sup>        |

<sup>(1)</sup> Members shall report their food aid operations in line with the relevant Rules of Procedure.

<sup>(2)</sup> Includes transport and other operational costs.

<sup>26</sup> There are three European Communities, the European Coal and Steel Community (ECSC); the European Community (EC), which was originally called the European Economic Community (EEC); and the European Atomic Energy Community (Euratom).

## Article XXII

### Signature and Ratification

(a) This Convention shall be open for signature from 1 May 1999 until and including 30 June 1999 by the Governments referred to in paragraph (e) of Article III.

(b) This Convention shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 June 1999, except that the Committee may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.

Exceptionally, other international organizations may be recognized for this purpose. It is noted that the Organization of African Unity is a party to the *Agreement establishing the Common Fund for Commodities, 1980*, which is open to “any intergovernmental organization of regional economic integration which exercises competence in the fields of activity of the Fund.” Articles 4 (b) and 54 of the Fund provide:

#### Article 4

##### Eligibility

Membership in the Fund shall be open to:

(a) All States Members of the United Nations or any of its specialized agencies or of the International Atomic Energy Agency; and

(b) Any intergovernmental organization of regional economic integration which exercises competence in fields of activity of the Fund. Such intergovernmental organizations shall not be required to undertake any financial obligations to the Fund; nor shall they hold any votes.

#### Article 54

##### Signature and Ratification, Acceptance or Approval

1. This Agreement shall be open for signature by all States listed in schedule A, and by intergovernmental organizations specified in article 4(b), at United Nations Headquarters in New York from 1 October 1980 until one year after the date of its entry into force.

2. Any signature State or signatory intergovernmental organization may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until 18 months after the date of its entry into force.

Accordingly, the Secretary-General, as depositary, decided that the Gulf Cooperation Council could not participate in the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994* (which is open to participation by regional economic integration organizations), because it did not possess the characteristics and competences that a regional economic integration organization must possess.

## 6. Limitations on the ability of international organizations to participate in treaties

a. Some treaties provide that an organization may become party to a treaty only if its constituent member States are already parties to the treaty. A key concern is to avoid the parties to a regional economic integration organization being given additional votes in an international organization through the participation of the regional economic integration organizations. Article VIII (a) of the *Protocol to the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November, 1976*, states:

This Protocol, of which the English and French texts are equally authentic, shall bear today's date and shall be open to signature by all States Parties to the Agreement, as well as by customs or economic unions, provided that all the member States constituting them are also Parties to the Protocol.

Furthermore, ratification by a regional economic integration organization will not be counted as an additional party for the purpose of determining the entry into force of the treaty. See the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 26(3)):

For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.<sup>27</sup>

b. Unless the treaty itself otherwise provides, under international law, an international organization participating in a treaty does so in its own

<sup>27</sup> See also the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998* (article 26(3)).

capacity and on behalf of the organization as a whole, rather than on behalf of each and all of its member States. When the treaty provides for participation by States and international organizations, particularly regional integration organizations with shared competence in the implementation of that treaty, the treaty often specifies the responsibilities of the organization and its member States in the performance of their obligations and the exercise of their rights under that treaty to avoid concurrence. This practice is followed notably in the environmental field. This practice has also prevailed in the field of commodity agreements, in respect of the European Community and its member States, despite the exclusive competence of the European Community for trade in goods, including commodity agreements.

The *Convention on Biological Diversity, 1992*, illustrates these principles:

Article 33

Signature

This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 to 14 June 1992, and at United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.

Article 34

Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.<sup>28</sup>

## 7. Exclusive competence of international organizations

Certain treaties prohibit member States of international organizations from becoming parties to the treaty in their own right, in cases where that international organization has competence over all the matters governed by the treaty. The *Agreement for the Implementation of the Provisions of the 1982 United Nations Convention on the Law of the Sea, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995*, provides in article 47(2):

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) In the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

<sup>28</sup> See also the *Vienna Convention for the Protection of the Ozone Layer, 1985* (articles 12 and 13), and the *United Nations Framework Convention on Climate Change, 1992* (articles 20 and 22).

## 8. Participation by entities other than States or international organizations

In principle, non-metropolitan and other non-independent territories do not have the power to conclude treaties. However, the parent State may authorize such a territory to enter into treaty relations either *ad hoc* or in certain fields. On the basis of such delegated authority, some treaties authorize participation by entities other than independent States or international organizations. However, this is exceptional.

For example, Hong Kong is a party to the World Meteorological Organization, the World Tourist Organization and the World Trade Organization.<sup>29</sup> Articles XI and XII of the *Marrakesh Agreement establishing the World Trade Organization, 1994* provide:

### Article XI

#### Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original members of WTO.
2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

### Article XII

#### Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the

<sup>29</sup> Hong Kong, because of its economic significance has been allowed to become party to treaties on its own behalf while it was a United Kingdom overseas territory and, more recently, as the Hong Kong Special Administrative Region of China. The United Kingdom gave Hong Kong instruments of "Entrustment" to conclude certain treaties for which the United Kingdom would remain ultimately responsible. The *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 1984*, allows the Hong Kong Special Administrative Region to be a separate customs territory that may participate in international trade agreements and organizations.

WTO. Such accession shall apply to this Agreement and the Multilateral Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article 305 (1) (c), (d) and (e) of the *United Nations Convention on the Law of the Sea, 1982*, permits certain self-governing associated States and internal self-governing territories to become parties, provided that they have competence on matters governed by the Convention, including the competence to enter into treaties in respect of those matters. Article 305(1) reads:

1. This Convention shall be open for signature by:

- (a) all States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
- (f) international organizations, in accordance with Annex IX.



## 9. Regional agreements

Certain regional treaties adopted within the framework of the United Nations regional commissions provide that they are open, not only to the States members of the Commission and to regional economic integration organizations but also to States having consultative status with the Commission and other entities specified.

See the *Agreement on International Railways in the Arab Mashreq, 2003*, a treaty concerning the provision of railway links between countries of the region. Article 4 states:

Signature, ratification, acceptance, approval and accession

1. This Agreement shall be open for signature to members of the Economic and Social Commission for Western Asia (ESCWA) at United Nations House in Beirut from 14 to 17 April 2003, and thereafter at United Nations Headquarters in New York until 31 December 2004.

2. The members referred to in paragraph 1 of this article may become Parties to this Agreement by:

- (a) Signature not subject to ratification, acceptance or approval (definitive signature);
- (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of the requisite instrument with the depositary.

4. States other than ESCWA members may accede to the Agreement upon approval by all ESCWA members Parties thereto, by depositing an instrument of accession with the depositary. The Secretariat of the ESCWA Committee on Transport (the "Secretariat") shall distribute the applications for accession of non-ESCWA member States to the ESCWA members Parties to the Agreement for their approval. Once notifications approving the said application are received from all ESCWA members Parties to the Agreement, the application for accession shall be deemed approved.

## D. OPENING FOR SIGNATURE

### Time

a. When a multilateral treaty provides for its signature, it usually specifies the period of time when signatures could be affixed to the treaty. Some treaties are open for signature indefinitely. This is the case with most multilateral treaties on human rights for which universal participation is an overriding concern. The *Convention on the Elimination of All Forms of Discrimination against Women, 1979*, and the *Convention on the Rights of the Child, 1989*, provide in articles 25 (1) and 46:

The present Convention shall be open for signature by all States.<sup>30</sup>

b. The most common approach in treaties is to indicate that they are open for signature until a specified event or a time period. The *Comprehensive Nuclear-Test-Ban Treaty, 1996*, in article XI provides:

This treaty shall be open to all States for signature before its entry into force.

The *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, in article 34 (1) specifies the following:

This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

### Venue

a. Treaties are most frequently open for signature at the United Nations Headquarters in New York unless specific arrangements are made with the Treaty Section consistent with ST/SGB/2001/7 to open a treaty for signature elsewhere. For example, the *Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997*, provides in article 34:

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May

<sup>30</sup> See also the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (article 86).

1997 until 21 May 2000 at United Nations Headquarters in New York.<sup>31</sup>

Treaties may be opened for signature in two different locations, at different times. Since there is only one original copy of each treaty deposited with the Secretary-General, it would not be physically possible to have the original text of a treaty in two simultaneous signature ceremonies. Treaties open for signature at two locations are very often open for signature at the place where the treaty was adopted and, subsequently, at United Nations Headquarters in New York. To facilitate treaty-signing events this was the case for most of the environmental conventions. This is done to facilitate high profile treaty signature ceremonies, which usually last for a short duration, arranged by the treaty secretariats or the States hosting the plenipotentiary conferences for the adoption of these treaties.<sup>32</sup> The arrangements are made in consultation with the Treaty Section. A representative of the Treaty Section customarily travels to the signing location and maintains custody of the original text.

**b.** The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 24, reads as follows:

This Convention shall be open for signature at Stockholm by all States and regional economic integration organizations on 23 May 2001, and at the United Nations Headquarters in New York from 24 May 2001 to 22 May 2002.<sup>33</sup>

A unique situation occurred in relation to the *Convention on the Law of the Sea, 1982*. Exceptionally, it was open for signature at two locations simultaneously. Given the effect of ST/SGB/2001/7, this situation is unlikely to recur. Article 305 (2) stipulates that:

2. This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

<sup>31</sup> See also the *Agreement on the establishment of the International Vaccine Institute, 1996* (article IV); the *International Convention on the Suppression of Financing of Terrorism, 1999* (article 25); and the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (article 34).

<sup>32</sup> In rare cases a treaty may be open for signature for a long period of time away from United Nations Headquarters. However, consistent with ST/SGB/2001/7, this is no longer the practice of the Secretary-General.

<sup>33</sup> See also the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997* (article 15); the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998* (article 12); and the *United Nations Convention against Transnational Organized Crime, 2000* (article 36).

## *Practice of the Secretary-General*

In accordance with the Secretary-General's bulletin ST/SGB/2001/7, section 6.3, "[a]ll treaties and international agreements deposited with the Secretary-General and open for signature shall remain in the custody of the Treaty Section. Any exceptions to this rule shall be arranged in advance with the Treaty Section."<sup>34</sup> In the event that the negotiating parties are committed to a signature ceremony away from the United Nations Headquarters, it has been the practice of the Secretary-General as depositary of multilateral treaties to advise that the ceremonial signature period in locations away from New York Headquarters be limited to a few days. The costs involved in moving the treaty, the necessary staff away from Headquarters, and the security of the treaty itself are major considerations for the Secretary-General.

(See also paragraphs 116 to 119 of the *Summary of Practice* for depositary practice regarding the opening for signature of multilateral treaties and section 3.1.2 of the *Treaty Handbook*.)

### **E. SIMPLE SIGNATURE**

Apart from authentication,<sup>35</sup> signature has other legal effects. Signature is usually the first step in the process of becoming party to a treaty. Multilateral treaties generally provide for signature subject to ratification, acceptance or approval also called simple signature. Simple signature indicates the State's intention to undertake positive action to express its consent to be bound by the treaty at a later date.

Signature creates an obligation for a signatory State to refrain from acts that would defeat the object and purpose of the treaty, until such State makes its intention clear not to become a party to the treaty. This fundamental principle of treaty law is enshrined in article 18 of the *Vienna Convention, 1969*, article 18:

Obligation not to defeat the object and purpose of a treaty prior to its entry into force.

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

<sup>34</sup> ST/SGB/2001/7.

<sup>35</sup> See chapter I, section A, above.

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;<sup>36</sup> or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

A signatory State also has certain rights. It is entitled to become a party to the treaty that it has signed and it is a recipient of depositary notifications and communications relating to such treaty (see article 77 of the *Vienna Convention, 1969*).<sup>37</sup>

### **Signature provision**

It is usual for multilateral treaties to contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc., as further discussed below. Article 34 of the *Agreement on the Privileges and Immunities of the International Criminal Court, 2002*, states:

Signature, ratification, acceptance, approval or accession

1. The present Agreement shall be open for signature by all States from 10 September 2002 until 30 June 2004 at United Nations Headquarters in New York.

2. The present Agreement is subject to ratification, acceptance or approval by Signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General.

3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General.

(For multilateral treaties deposited with the Secretary-General, practical information regarding arrangements with the Treaty Section to sign a treaty, see section 6.2 of the *Treaty Handbook*.)

(For full powers to sign a treaty, when required, see the *Summary of Practice*, paragraphs 101 to 115, and the *Treaty Handbook*, section 3.2 and annexes 1 and 3.)

<sup>36</sup> See notifications of the United States of America and Israel in relation to the International Criminal Court in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER/E/21) or the electronic version available on the Internet, chapter XVIII.10.

<sup>37</sup> For practical reasons, it is the current practice of the Secretary-General as depositary that all States, even non-participant States, receive depositary notifications in hard copy and electronic format.

Although it is now an outdated practice, some multilateral treaties do not provide for their signature. Treaties adopted within the Food and Agriculture Organization normally provide for acceptance without prior signature as the way to express consent to be bound.<sup>38</sup> The *Protocol relating to the Status of Refugees, 1967*, the *Convention on the Privileges and Immunities of the Specialized Agencies, 1947*, and the *Convention on the Privileges and Immunities of the United Nations, 1946*, each provides that consent to be bound must be expressed by accession.

### **F. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION**

In order to become a party to a multilateral treaty, a State must demonstrate its willingness to undertake the legal rights and obligations contained in the treaty. It must express, through a concrete act, its consent to be bound by the treaty. A State can express its consent to be bound in several ways. The most common ways are definitive signature, ratification, acceptance, approval and accession (see article 11 of the *Vienna Convention, 1969*). These actions refer to acts undertaken at the international level requiring the execution of an instrument and the deposit of such instrument with the depositary.

(See paragraphs 120 to 143 of the *Summary of Practice* and sections 3.3, 6.3 and annexes 4 and 5 of the *Treaty Handbook*.)

#### **1. Definitive signature**

Some treaties provide that States can express their consent to be legally bound by signature alone (see article 12 of the *Vienna Convention 1969*). This method is most commonly used in bilateral treaties and is rarely used in modern multilateral treaties. Where it is employed in a multilateral treaty, the entry into force provision will expressly provide that the treaty will enter into force upon the definitive signature and the deposit of instruments of ratification, acceptance, approval or accession by a specific number of States.

Of the treaties deposited with the Secretary-General, this method is most commonly used in certain treaties negotiated under the auspices of the Economic Commission for Europe. The *Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of such Inspections, 1997*, article 4 (3) states:

<sup>38</sup> See the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993*.



Countries under paragraphs 1 and 2 of this Article may become Contracting Parties to the Agreement:

- (a) By signing it without reservation to ratification;
- (b) By ratifying it after signing it subject to ratification;
- (c) By acceding to it.

Also article 12 (2) of the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, 1998, provides:

A State may express its consent to be bound by this Convention:

- (a) by signature (definitive signature);
- (b) by signature subject to ratification, acceptance or approval followed by deposit of an instrument of ratification, acceptance or approval; or
- (c) by deposit of an instrument of accession.

#### *Practice of the Secretary-General*

The depositary must ensure that the signatory does not exceed his or her powers. It is therefore necessary for the depositary to verify the nature and scope of the powers issued to the representative before the latter signs the treaty to ascertain, *inter alia*, whether the signature is subject to ratification. In those cases where the full powers are not required and the treaty provides for definitive signature, the depositary will normally request confirmation on this point. Where a signature is affixed without written confirmation of the intent of the signatory, the assumption is that it is a simple signature.

## **2. Ratification, acceptance and approval**

- a.** Modern multilateral treaties explicitly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval (see article 14 of the *Vienna Convention, 1969*). The *United Nations Convention against Transnational Organized Crime, 2000*, provides in article 36 (3) that the Convention is subject to ratification, acceptance or approval:

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. [...]

Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level. Upon ratification, the treaty legally binds the State.

The *International Covenant on Civil and Political Rights, 1966*, and the *International Covenant on Economic, Social and Cultural Rights, 1966*, provide in paragraphs 1 and 2 of articles 48 and 26, respectively, that the Covenants are subject to ratification:

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

- b.** Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise. The *Convention on Prohibitions or Restrictions on the Use of*



*Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, permits acceptance or approval with prior signature. Article 4 stipulates:

1. This Convention is subject to ratification, acceptance or approval by the Signatories. Any State which has not signed this Convention may accede to it.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
3. Expressions of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State, provided that at the time of deposit of its instrument of ratification, acceptance or approval of this Convention or accession thereto, that State shall notify the Depositary of its consent to be bound by any two or more of these Protocols.
4. At any time after the deposit of its instrument of ratification, acceptance or approval of this Convention or accession thereto, a State may notify the Depositary of its consent to be bound by any annexed Protocol by which it is not already bound.
5. Any Protocol by which a High Contracting Party is bound shall for that Party form an integral part of this Convention.

*The Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950*, allows for acceptance of the treaty as follows:

#### Article X

The States referred to in paragraph 1 of article IX may accept this Agreement from 22 November 1950. Acceptance shall become effective on the deposit of a formal instrument with the Secretary-General of the United Nations.

The European Community uses the mechanism of acceptance or approval frequently.

(Model instruments of ratification, acceptance or approval are available in the *Treaty Handbook*.)

### 3. Accession

A State may express its consent to be bound by a treaty by accession (see article 15 of the *Vienna Convention, 1969*). Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance and

approval, which must be preceded by signature, accession requires only the deposit of an instrument of accession. Accession, as a means of becoming party to a treaty, is generally used by States wishing to express their consent to be bound by a treaty if, for whatever reason, they are unable to sign it. This may occur if the deadline for signature has passed or if domestic circumstances prevent a State from signing a treaty.

Accession is also an action that a new State may take when it does not wish to be bound immediately by virtue of succession, which is generally considered to be effective on the date the new State becomes responsible for its international affairs, unless it is not possible to determine such a date. For example, Serbia and Montenegro acceded to the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, on 12 March 2001.

**a.** The common approach is for multilateral treaties to provide for accession. article 16 of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, states:

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratifications, acceptance, approval or accession shall be deposited with the Depositary.<sup>39</sup>

**b.** Many treaties in the human rights field provide for accession at any time; they do not specify the deadline for signature. Article 18 of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, states:

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Likewise, articles 48 (3) and 26 (3) of the *International Covenant on Civil and Political Rights, 1966*, and the *International Covenant on Economic,*

<sup>39</sup> See also the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992* (article 25).

*Social and Cultural Rights, 1966*, state:

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.<sup>40</sup>

c. Normally treaties permit accession from the day after they close for signature. This is consistent with the traditional approach. See article 25 (1) of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998*, which permits accession from the day after it closes for signature:

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Similarly, article 24 (1) of the *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, provides that:

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.<sup>41</sup>

Other treaties provide for States to accede after the treaty enters into force. Disarmament treaties make provision of this nature. Article XIII of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, provides:

Any State which does not sign this treaty before its entry into force may accede to it at any time thereafter.<sup>42</sup>

<sup>40</sup> See also the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (article 25); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (article 26); the *Convention on the Rights of the Child, 1989* (article 48); and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (article 86).

<sup>41</sup> See also the *Vienna Convention for the Protection of the Ozone Layer, 1985* (article 14); and the *Convention on Biological Diversity, 1992* (article 35).

<sup>42</sup> See also the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992* (article XX); and the *International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973* (article XIV).

d. Some treaties may also permit accession without explicitly specifying when the action may be undertaken. This is a technique adopted in recent times to accommodate States that for various reasons are unable to sign a treaty but would nevertheless wish to become parties to it. See the *Rome Statute of the International Criminal Court, 1998*, article 125:

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.<sup>43</sup>

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, states:

#### Article 15

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 to 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

#### Article 16

1. This Convention is subject to ratification, acceptance or approval of the Signatories.

2. It shall be open for accession by any State which has not signed the Convention.

[...]

<sup>43</sup> See also the *International Convention for the Suppression of the Financing of Terrorism, 1999* (article 25); the *United Nations Convention against Transnational Organized Crime, 2000* (article 36); and the *Agreement on the Privileges and Immunities of the International Criminal Court, 2002* (article 34).

In such cases, some States have deposited instruments of accession while the treaty was still open for signature. The Former Yugoslav Republic of Macedonia and Equatorial Guinea deposited their instruments of accession during the period when the Convention was still open for signature, i.e., before the entry into force of the Convention on 1 March 1999.

(A model instrument of accession is available at page 49 of the *Treaty Handbook*.)

#### *Practice of the Secretary-General*

Where a treaty provides for conditions of accession (after a date or an event) but an instrument of accession is received before such conditions are fulfilled, the Secretary-General, as depositary, will inform the State that its instrument will be held until the conditions for accession are fulfilled; once fulfilled it will be accepted in deposit. Until then, the instrument will not count for the purposes of calculating the date of entry into force.

#### **4. Ratification, acceptance, approval or accession with conditions**

Some multilateral treaties impose specific limitations or conditions on ratification, acceptance, approval or accession. These conditions, being mandatory in most cases and specifically incorporated to achieve a particular objective, should be satisfied. When a State deposits with the Secretary-General an instrument of ratification, acceptance or approval, or accession to the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, article 3 (2) provides:

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

A State depositing an instrument of ratification, acceptance or approval, or accession to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, must, at the same time, notify the Secretary-General of its consent to be bound by any two or more of the protocols related to

the Convention.<sup>44</sup>

The conditions under the *International Sugar Agreement, 1992*, article 41 are explicitly incorporated:

This Agreement shall be open to accession by the Governments of all states upon conditions established by the council. Upon accession, the State concerned shall be deemed to be listed in the annex to this Agreement, together with its votes as laid down in the conditions of accession.

Accession shall be effected by the deposit of an instrument of accession with the depositary. Instruments of accession shall state that the Government accepts all the conditions established by the Council.

When the consent of a State to be bound by a treaty is expressed in any of the forms discussed above, an instrument of ratification, acceptance, approval or accession establishes such consent upon deposit with the depositary. In the practice of the Secretary-General, it is the date of deposit of the communication with the depositary that is relevant. Accordingly, the depositary performs functions of considerable significance, including determining the date when the treaty enters into force.

#### **G. PROVISIONAL APPLICATION OF A TREATY**

##### **1. Provisional application of a treaty before its entry into force**

Provisional application of a treaty may occur when a State unilaterally decides to give legal effect to the obligations under a treaty on a provisional and voluntary basis. This provisional application may end at any time.

A treaty or part of it is applied provisionally pending its entry into force if either the treaty itself so provides or the negotiating States, in some other manner, have so agreed. Article 25 (1) of the *Vienna Convention, 1969*, states:

Provisional application

A treaty or a part of a treaty is applied provisionally pending its entry into force if:

<sup>44</sup> The relevant protocols are Protocols I, II and III of 10 October 1980; Protocol IV of 13 October 1995; and Protocol II, as amended, of 3 May 1996. Any State that expresses its consent to be bound by Protocol II after the amended Protocol II entered into force on 3 December 1998 is considered to have consented to be bound by Protocol II, as amended, unless it expresses a contrary intention. Such a State is also considered to have consented to be bound by the unamended Protocol II in relation to any State that is not bound by Protocol II, as amended, pursuant to article 40 of the *Vienna Convention, 1969*.



- (a) the treaty itself so provides; or
- (b) the negotiating States have in some other manner so agreed.

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, article 18 states:

Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Also, article 7 of the *Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, provides:

Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

- (a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;
- (b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;
- (c) States and entities which consent to its provisional application by so notifying the depositary in writing;
- (d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.<sup>45</sup>

Article 308 (4) of the *United Nations Convention on the Law of the Sea, 1982*, stipulates:

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<sup>45</sup> The *Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, applied provisionally with effect from 16 November 1994, the date on which the *United Nations Convention on the Law of the Sea, 1982*, entered into force.

4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.

Unless the treaty provides otherwise a State may unilaterally terminate such provisional application at any time upon notification to the depositary.<sup>46</sup>

**2. Provisional application of a treaty after its entry into force**

Provisional application is possible even after the entry into force of a treaty. This option is open to a State that may wish to give effect to the treaty without incurring the legal commitments under it. It may also wish to cease applying the treaty without complying with the termination provisions. The *International Cocoa Agreement, 1993*, article 55 (1) provides:

Notification of Provisional Application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government for which the Council has established conditions for accession, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 56 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.<sup>47</sup>

**H. RESERVATIONS**

The *Vienna Convention, 1969*, defines a reservation as a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (see article 2(1)(d)). The *Vienna Convention, 1986*, uses a similar definition (see article 2(1)(d)).

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<sup>46</sup> See paragraph 2 of article 25 of the *Vienna Convention, 1969*. Article 25 (2) of the *Vienna Convention, 1969*, deals with the difference between termination of the provisional application and termination of or withdrawal from a treaty by consent of the parties as provided in article 54 of the *Vienna Convention, 1969*. Pursuant to article 54, a State may terminate the provisional application at any time but a State that has expressed its consent to be bound by a treaty through definitive signature, ratification, acceptance, approval or accession, generally can only withdraw or terminate it in accordance with the treaty provisions or in accordance with general rules of treaty law.

<sup>47</sup> See also the *International Agreement on Olive Oil and Table Olives, 1986* (article 54), and the *International Sugar Agreement, 1992* (article 39).



Reservations restrict or modify the effects of treaties but they may help to promote international relations by enabling States to participate in treaties that they would not participate in without reservations. Reservations to multilateral treaties raise the immediate question of their admissibility and validity.

The Secretary-General's practice has seen the law on reservations develop. In some areas, such developments were not envisaged in the *Vienna Convention, 1969*.

(See the *Summary of Practice*, paragraphs 161 to 216. For current practice see *Treaty Handbook*, sections 3.5 and 6.4. See also the Reports of Alain Pellet, Special Rapporteur for the topic "law and practice relating to reservations to treaties" as appointed by the International Law Commission at the forty-sixth session in 1994.<sup>48</sup>)

## 1. Formulation of reservations

Article 19 of the *Vienna Convention, 1969*, on the formulation of reservations provides that:

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation, unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

In accordance with article 20 (1) of the *Vienna Convention, 1969*, a reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States, unless the treaty so provides.

### *Where reservations are permitted*

- a. Some treaties expressly permit reservations. The *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998*, in its article 14 (1) sets forth the following:

<sup>48</sup> A/CN.4/470 and Corr.1 (first report); A/CN.4/477 and Add.1 (second report); A/CN.4/491 and Corr.1 (English only); A/CN.4/491/Add.1, Add.2 and Corr.1, Add.3 and Corr.1 (Chinese, French and Russian only); Add.4 and Corr.1, Add.5 and Add.6 and Corr.1 (third report); A/CN.4/499 (fourth report); A/CN.4/508/Add.1 to 4 (fifth report); A/CN.4/518 and Add.1 to 3 (sixth report); and A/CN.4/526 and Add.1 to 3 (seventh report).

When definitively signing, ratifying or acceding to this Convention or any amendment hereto, a State Party may make reservations.

- b. Treaties providing for reservations may also contain clauses stipulating the legal consequences deriving from a reservation or an objection. This is not common in recent practice. The *Convention on the Nationality of Married Women, 1957*, article 8 (2) provides that:

If any State makes a reservation in accordance with paragraph 1 of the present article, the Convention, with the exception of those provisions to which the reservation relates, shall have effect as between the reserving State and the other Parties. The Secretary-General of the United Nations shall communicate the text of the reservation to all States which are or may become Parties to the Convention. Any State Party to the Convention or which thereafter becomes a Party may notify the Secretary-General that it does not agree to consider itself bound by the Convention with respect to the State making the reservation. This notification must be made, in the case of a State already a Party, within ninety days from the date of the communication by the Secretary-General; and, in the case of a State subsequently becoming a Party, within ninety days from the date when the instrument of ratification or accession is deposited. In the event that such a notification is made, the Convention shall not be deemed to be in effect as between the State making the notification and the State making the reservation.

- c. Reservations may be withdrawn at any time by the reserving State. Such withdrawals do not require the consent of other parties (see article 22 (1) of the *Vienna Convention, 1969*). Although not a common practice in contemporary multilateral treaties, it is possible to provide for the withdrawal of reservations. Article 20 (3) of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, that provides:

Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.<sup>49</sup>

When permitted by the treaty, reservations are to be made at the time of signing or of depositing an instrument expressing the consent to be bound by the treaty. If a reservation is formulated upon simple signature, it must be confirmed when the State expresses its consent to be bound. If the reservation made at the time of

<sup>49</sup> Examples of similar wording are found in the *Convention on the Rights of the Child, 1989* (article 5); the *International Convention Against Recruitment, Use, Financing and Training of Mercenaries, 1989* (article 17); the *International Convention for the Suppression of Terrorist Bombings, 1997* (article 20); and the *International Convention for the Suppression of the Financing of Terrorism, 1999* (article 24).

simple signature were not confirmed upon ratification, acceptance or approval, it would have no legal validity.

In some instances, States parties formulate reservations after having expressed their consent to be bound (late reservations).

(For the time for formulating reservations, see also section 3.5.3 of the *Treaty Handbook*.)

#### *Practice of the Secretary-General*

Where a State formulates a reservation expressly authorized by the treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification.

#### **Where reservations are prohibited**

**a.** It is not unusual for some treaties to expressly prohibit reservations. All reservations are prohibited under article 120 of the *Rome Statute of the International Criminal Court, 1998*:

No reservations may be made to this Statute.<sup>50</sup>

Treaties in the environmental field often prohibit reservations. The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 27 provides that:

No reservations may be made to this Convention.

The *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, article 18 provides:

No reservations may be made to this Protocol.

The *Vienna Convention for the Protection of the Ozone Layer, 1985*, states in article 18:

No reservations may be made to this Convention.<sup>51</sup>

**b.** Other treaties implicitly prohibit the formulation of reservations. For example, it is generally acknowledged that international labour

conventions implicitly prohibit reservations due to the objective of the International Labour Organization (ILO) to make uniform the labour conditions worldwide.

#### *Practice of the Secretary-General*

Where a treaty prohibits reservations, the Secretary-General, as depositary, makes a preliminary legal assessment as to whether a given statement constitutes a reservation.

If the statement has no bearing on the State's legal obligations, the Secretary-General circulates the statement. If the statement *prima facie* unambiguously excludes or modifies the legal effects of the provisions of the treaty, the Secretary-General will draw the attention of the State concerned to the issue. The Secretary-General may also request clarification from the declarant on the real nature of the statement. If it is formally clarified that the statement is not a reservation, the Secretary-General will formally receive the instrument in deposit and notify all States concerned. Such clarification will estop the State concerned from relying on its "reservation" later.

States may also revise the statements that they submitted.

#### **Where only certain reservations are permitted**

**a.** A treaty may permit certain reservations only. The *International Convention on Arrest of Ships, 1999*, in its article 10 states:

##### Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any of the following:

- (a) ships which are not seagoing;
- (b) ships not flying the flag of a State Party;
- (c) claims under article 1, paragraph 1(s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, the rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

**b.** Other treaties prohibit reservations with exceptions. See article 309 of the *United Nations Convention on the Law of the Sea, 1982*, to which no

<sup>50</sup> See also provisions with similar but not identical wording: the *International Natural Rubber Agreement, 1987* (article 67); and the *International Coffee Agreement, 2000* (article 47).

<sup>51</sup> Provisions with identical wording include the *United Nations Framework Convention on Climate Change, 1992* (article 24); the *Convention on Biological Diversity, 1992* (article 37); the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994* (article 37); and the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 27).

entity may make a reservation or exception, unless expressly permitted elsewhere in the Convention:

Reservations and exceptions

No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.<sup>52</sup>

Article 2 of the *Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, provides that article 309 of the Convention also applies to the Agreement.

Article XV of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, in respect to its Protocol and the annexes to the Protocol provides:

The Articles of and the Annexes to this Treaty shall not be subject to reservations. The provisions of the Protocol to this Treaty and the Annexes to the Protocol shall not be subject to reservations incompatible with the object and purpose of this Treaty.<sup>53</sup>

## 2. Formulation of reservations: where the treaty is silent on reservations

Many treaties do not make provision for reservations. Human rights treaties often fall into this category.<sup>54</sup> That is the case of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, which, following the formulation of reservations made by the former Soviet Union and other Eastern European countries to some of its provisions,<sup>55</sup> marked an important step in the development of the doctrine relating to the admissibility of reservations.

The basic rules relating to reservations are embodied in article 19 of the *Vienna Convention, 1969*, which states:

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

<sup>52</sup> Similar wording is found in the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (article 44).

<sup>53</sup> See the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992* (article XXII).

<sup>54</sup> See the *International Covenant on Economic, Social and Cultural Rights, 1966*; the *International Covenant on Civil and Political Rights, 1966*; the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968*; the *International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973*; the *International Convention against Apartheid in Sports, 1985*; and the *Agreement establishing the Fund for the Indigenous Peoples of Latin America and the Caribbean, 1992*.

<sup>55</sup> For the text of reservations concerning articles IX and XII of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, see *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER/E/21) or its electronic version available on the Internet, chapter IV.1.

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Articles 20 and 21 of the *Vienna Convention, 1969*, deals with objections to reservations and the legal effects of reservations and objections to reservations. Withdrawal of reservations is dealt with under article 22 of the *Vienna Convention, 1969*. Reservations and objections to reservations, as well as withdrawal of reservations or objections must be formulated in writing (see article 23 of the *Vienna Convention, 1969*).

### *Practice of the Secretary-General*

Where a treaty is silent on reservations and a State formulates a reservation consistent with article 19 of the *Vienna Convention, 1969*, the Secretary-General, as depositary, informs the States concerned of the reservation by depositary notification.

(See also the *Summary of Practice*, paragraphs 168 to 181.)

## I. DECLARATIONS

The contemporary practice shows a proliferation of declarations in relation to treaties. Articles on declarations and notifications included in the text of the treaty are not always found in the sections addressing the final clauses or final provisions. Instead, they may appear in other sections of the treaty text.

(See the *Summary of Practice*, paragraphs 217 through 220, and the *Treaty Handbook*, section 3.6.)

### 1. Interpretative declarations

Unlike reservations, interpretative declarations do not purport to exclude or limit the legal effect of certain provisions of a treaty in their application to a particular State but only to clarify their meaning or interpretation. However, in practice, the determination of whether a statement is a declaration or an unauthorized reservation may become complex. See paragraphs 217 to 220 of the *Summary of Practice*.



Declarations are usually made at the time of signature or at the time of the deposit of the relevant instrument.<sup>56</sup>

A treaty may expressly provide for the formulation of declarations. Article 310 of the *United Nations Convention on the Law of the Sea, 1982*, stipulates the following:

#### Declarations and statements

Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

## 2. Mandatory declarations

Some treaties provide that certain declarations must be made by contracting States at the time of expressing their consent to be bound by the treaty or within a certain time period from the moment such consent has been expressed. The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*, provides in its article III:

1. Each State Party shall submit to the Organization, not later than 30 days after this Convention enters into force for it, the following declarations, in which it shall:

- (a) With respect to chemical weapons:
  - (i) Declare whether it owns or possesses any chemical weapons, or whether there are any chemical weapons located in any place under its jurisdiction or control;
  - (ii) Specify the precise location, aggregate quantity and detailed inventory of chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraphs 1 to 3, of the (iii)

<sup>56</sup> In the past, declarations were sometimes made in contemplation of the impending signature of the treaty, after its adoption. In such cases, the Secretary-General has considered such declarations to be made at the time of signature and has circulated their text accordingly. See those declarations that related directly to the implementation of the treaty included in the Final Act of the Conference that adopted the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989*. Such declarations were considered to be made upon signature and were circulated accordingly.

Verification Annex, except for those chemical weapons referred to in sub-paragraph (iii);

- (iii) Report any chemical weapons on its territory that are owned and possessed by another State and located in anyplace under the jurisdiction or control of another State, in accordance with Part IV (A), paragraph 4, of the Verification Annex;
- (iv) Declare whether it has transferred or received, directly or indirectly, any chemical weapons since January 1946 and specify the transfer or receipt of such weapons, in accordance with Part IV (A), paragraph 5, of the Verification Annex;
- (v) Provide its general plan for destruction of chemical weapons that it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraph 6, of the Verification Annex;
- (b) With respect to old chemical weapons and abandoned chemical weapons: [...]
- (c) With respect to chemical weapons production facilities: [...]
- (d) With respect to other facilities: [...]
- (e) With respect to riot control agents: [...].<sup>57</sup>

Also the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, article 3 (2) stipulates:

Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

## 3. Optional declarations

A treaty may provide for optional declarations. Many human rights treaties provide for States to make legally binding optional declarations. These declarations mostly relate to the competence of the human rights committees as independent treaty monitoring bodies responsible for overseeing the implementation of the treaty provisions. The Head of State, the Head of Government or the Minister for Foreign Affairs must sign such declarations.

<sup>57</sup> An additional example of a mandatory declaration is seen in the *Convention relating to the Status of Refugees, 1951* (article I B.1).



The *Convention against Torture and Other Cruel, Inhuman or Degrading, Treatment or Punishment, 1984*, provides for optional declarations recognizing the competence of the Committee against Torture to receive and consider communications from States claiming the non-observance of the Convention by another State party (article 21) or from or on behalf of individuals claiming to be victims of a violation by a State party of the provisions of the Convention. Articles 21 and 22 read:

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. [...]

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

[...]

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties

with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Similarly, the *International Covenant on Civil and Political Rights, 1966*, provides for an optional declaration under article 41 recognizing the competence of the Human Rights Committee:

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

[...]

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Likewise, the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, article 14 (1), (2) and (3) provides for declarations relating to the competence of the Committee on the Elimination of Racial Discrimination:

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the

Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

[...]<sup>58</sup>

#### *Practice of the Secretary-General*

Since interpretative declarations do not have the legal effect similar to that of a reservation, they need not be signed by a formal authority as long as they clearly emanate from the State concerned. However, it is highly desirable that the Head of State, Head of Government or the Minister for Foreign Affairs signs such a declaration in the event that the declaration turns out to be a reservation. In accordance with the practice of the Secretary-General, optional and mandatory declarations imposing legal obligations on the declarant must be signed by the Head of State, the Head of Government or the Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

#### **J. NOTIFICATIONS**

Notifications should be distinguished from interpretative declarations. Interpretative declarations are normally statements that make more explicit the

<sup>58</sup> The *Convention on the Elimination of All Forms of Discrimination against Women, 1979*, and the *Convention on the Rights of the Child, 1989*, also establish independent bodies (the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, respectively) that monitor how well States meet their obligations under those conventions. However, these two conventions do not provide for the optional acceptance of the competence of their respective committees. Furthermore, the Committee on Economic, Social and Cultural Rights, unlike the five other human rights treaty bodies, was not established by its corresponding Covenant, the *International Covenant on Economic, Social and Cultural Rights, 1966*, but created in 1985 by the Economic and Social Council of the United Nations.

meaning of a provision. Notifications are statements simply providing information required under a treaty. The *International Convention for the Suppression of the Financing of Terrorism, 1999*, article 7 (3) states:

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

Likewise, article 45 (4) of the *Convention on Road Traffic, 1968*, stipulates:

4. On signing this Convention or on depositing its instrument of ratification or accession, each State shall notify the Secretary-General of the distinguishing sign it has selected for display in international traffic on vehicles registered by it, in accordance with Annex 3 to this Convention. By a further notification addressed to the Secretary-General, any State may change a distinguishing sign it has previously selected.

However, some notifications made under a treaty may create binding new or additional obligations. See the *International Covenant on Civil and Political Rights, 1966*. Pursuant to article 4, States may, in case of public emergency, suspend the application of certain provisions of the Covenant. In addition, the State using the right of derogation must notify the Secretary-General of such derogation. This is usually done by note verbale from the Permanent Mission of the notifying State to the United Nations to which the relevant domestic Decree is attached. Article 4 reads:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Also, article I B.(2) of the *Convention Relating to the Status of Refugees, 1951*, requires contracting States to notify the Secretary-General when extending their obligations under the Convention. Article I B. states:

I B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either

(a) “events occurring in Europe before 1 January 1951”; or

(b) “events occurring in Europe or elsewhere before 1 January 1951”;

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

#### K. ENTRY INTO FORCE

For a multilateral treaty to become binding under international law, it is necessary that the conditions for its entry into force be fulfilled.

The provisions of the treaty normally determine the manner in which and the date on which the treaty enters into force. If the treaty does not provide for a date or the method of entry into force, there is a presumption that the treaty enters into force as soon as the negotiating States have expressed their consent to be bound by the treaty (see article 24 (1) and (2) of the *Vienna Convention, 1969*). However, this method of entry into force is not generally used in modern multilateral treaties.

When a State expresses its consent to be bound by a treaty after the treaty has come into force, the treaty enters into force for such State on that date, unless the treaty provides otherwise (see article 24 (3) of the *Vienna Convention, 1969*). Accordingly, a treaty may be binding for certain States, following the entry into force provisions established therein but not for all participants. It will not be applicable to States, which, although entitled to become parties, have not yet expressed their consent to be bound.

The rule embodied in article 24 (2) of the *Vienna Convention, 1969* requiring the unanimous consent of the negotiating States, has never been applied for treaties

deposited with the Secretary-General, as it is very difficult to achieve universal participation.<sup>59</sup>

The depositary has functions of considerable importance relating to the provision of information as to the time at which the treaty enters into force.

(See paragraphs 221 to 247 of the *Summary of Practice* and section 4.2 of the *Treaty Handbook*.)

#### 1. Definitive entry into force of a treaty

A treaty may provide that it shall enter into force on the date when certain conditions are met, or that it shall enter into force on a specific date.

#### Upon a specified number, percentage or category of States depositing instruments expressing consent to be bound

a. To enter into force, most treaties require that a minimum number of States express their consent to be bound by a particular treaty. See article 36(1) of the *Framework Convention on Tobacco Control, 2003*:

Entry into force

1. This Convention shall enter into force on the ninetieth day following the date of the deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

The required number can be very small (see the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956*, which needed two States for its entry into force). Generally, the number of instruments of consent to be bound for the entry into force of a treaty is much larger. The *Rome Statute of the International Criminal Court, 1998*, required sixty. A significant number of instruments of consent to be bound are specified to ensure broad acceptance of the treaty before its entry into force.

b. Treaties could provide that entry into force shall take place when a specified number of States have deposited their instruments expressing consent to be bound. Although this is a straightforward and uncomplicated formulation, it is not usual to find modern treaties that enter into force immediately upon deposit. See the *Agreement on the Establishment of the International Vaccine Institute, 1996*, article VIII (1):

<sup>59</sup> See the *Treaty establishing the European Economic Community, 1957* (article 247).



This Agreement and the Constitution appended thereto shall come into force immediately after three instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General.<sup>60</sup>

c. Treaties normally stipulate that a certain period of time must elapse between the date on which the required number of instruments is deposited and the date of entry into force. A time period is often required to ensure that pre-conditions are met. This period may vary from thirty days to twelve months. The time so provided may give contracting States time to enact domestic legislation or to bring into effect implementing legislation previously enacted. It also gives the depositary time to notify contracting States of the forthcoming entry into force. The *Agreement on the Privileges and Immunities of the International Criminal Court, 2002*, article 35 states:

1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the tenth instrument of ratification, acceptance, approval or accession.

Likewise, the *United Nations Convention Against Transnational Organized Crime, 2000*, article 38 (1) states:

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of the deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.<sup>61</sup>

d. Where the negotiating States considered that it is necessary to ensure that a range of pre-conditions are met prior to the entry into force of a treaty, treaties may provide for additional conditions to be satisfied in addition to the deposit of a specified number of instruments. Certain environmental and disarmament treaties require that specific categories of States be

<sup>60</sup> See also the *Agreement on the Importation of Educational, Scientific and Cultural Matters, 1950* (article 11); the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956* (article 13); the *Protocol relating to the Status of Refugees, 1967* (article VIII); the *Agreement establishing the International Pepper Community, 1971* (article 12); the *Convention on the Registration of Objects Launched into Outer Space, 1974* (article 8); and the *Agreement Establishing the Asia-Pacific Institute for Broadcasting Development, 1977* (article 16).

<sup>61</sup> See also article 126 of the *Rome Statute for the International Criminal Court, 1998* (sixty days); article 87 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (three months); article 45 of the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (six months); and article 308 of the *United Nations Convention on the Law of the Sea, 1982* (twelve months).

included among the number of parties needed for the entry into force. This ensures that States with significant interests in the subject matter, major financial contributors or those that are crucial for the implementation of the treaty become parties from the outset. This is also a factor that normally delays the entry into force of a treaty. Article 25 of the *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, provides:

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.

2. For the purposes of this Article, "the total carbon dioxide emissions for 1990 of the Parties included in Annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.<sup>62</sup>

The *Comprehensive Nuclear-Test-Ban Treaty, 1996*, cannot enter into force until the forty-four States named in annex 2 to the treaty have ratified the treaty. Annex 2 comprises States that formally participated in the 1996 session of the Conference on Disarmament, and that possess nuclear research and nuclear power reactors according to data compiled by the International Atomic Energy Agency. Article XIV provides:

Entry into force

1. This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in

<sup>62</sup> The *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987* (article 16), requires that the minimum ratifications, accessions etc. for entry into force represent at least two thirds of the States responsible for the 1986 estimated global consumption of the controlled substances (CFCs).



Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.

2. If this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary shall convene a Conference of the States that have already deposited their instruments of ratification upon the request of a majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 has been met and shall consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this Treaty.

3. Unless otherwise decided by the Conference referred to in paragraph 2 or other such conferences, this process shall be repeated at subsequent anniversaries of the opening for signature of this Treaty, until its entry into force.

4. All States Signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.

5. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30th day following the date of deposit of their instruments of ratification or accession.

*The European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), 1991, in its article 10 (1) states:*

1. This Agreement shall enter into force 90 days after the date on which the Governments of eight States have deposited an instrument of ratification, acceptance, approval or accession, provided that one or more lines of international combines network link, in a continuous manner, the territories of at least four of the States which have deposited such an instrument.

e. Some treaties exceptionally provide, as an additional condition, that those States that have expressed their consent to be bound also specifically agree on the entry into force. Thus, article 21 of the *Statutes of the International Centre for Genetic Engineering and Biotechnology, 1983*, states:

1. These Statutes shall enter into force when at least 24 States, including the Host State of the Centre, have deposited instruments of ratification or acceptance and, after having ascertained among themselves that sufficient financial resources are ensured, notify the Depositary that these Statutes shall enter into force.

Similarly, article 25 of the *Constitution of the United Nations Industrial Development Organization, 1979*, provides:

1. This Constitution shall enter into force when at least eight States that had deposited instruments of ratification, acceptance or approval notify the Depositary that they have agreed, after consultations among themselves, that this Constitution shall enter into force.

f. Where specific geographical representation is considered important by the negotiating States, it is possible to stipulate this element. This approach ensures a deliberately wide geographical participation in the treaty. The *Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, 1984*, requires ratification by nineteen States and organizations within the geographical scope of the Protocol (Europe).<sup>63</sup> Article 10 of the Protocol states:

#### Entry into Force

1. The present Protocol shall enter into force on the ninetieth day following the date on which:

- (a) instruments of ratification, acceptance, approval or accession have been deposited by at least nineteen States and Organizations referred to in article 8 paragraph 1 which are within the geographical scope of EMEP; and
- (b) the aggregate of the UN assessment rates for such States and Organizations exceeds forty per cent.

2. For each State and Organization referred to in article 8, paragraph 1, which ratifies, accepts or approves the present protocol or accedes thereto after the requirements for entry into force laid down in paragraph 1 above have been met, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or Organization of its instrument of ratification, acceptance, approval or accession.

The *International Agreement for the Establishment of the University for Peace and Charter of the University for Peace, 1982*, provides that the minimum of ten States required for the entry into force must represent at least two continents. Article 7 states:

The present Agreement shall enter into force on the date on which it shall have been signed or acceded to by ten States from more than one continent. For States signing or acceding after the

<sup>63</sup> Accordingly, instruments deposited by Canada and the United States before the entry into force of the Protocol did not count for the purpose of the entry into force of the Protocol.

entry into force, the Agreement shall enter into force upon the date of signature or accession.

#### **On a specific date**

- a.** Some treaties exceptionally provide for a set date of entry into force. This type of provision is quite unusual as securing the necessary instruments of consent to be bound by a given date may prove to be difficult. The *Agreement providing for the Provisional Application of the Draft International Customs Conventions on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, 1949*, stipulates in its article III (1):

The present Agreement shall enter into force on 1 January 1950.

- b.** Usually, where a treaty specifies a date for its entry into force, it also provides for certain other conditions to be fulfilled. For example, the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, article 16 states:

#### Entry into force

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by this date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.
2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

The required number of instruments for the entry into force of the Montreal Protocol was received prior to 1 January 1989. However, since the Protocol did not define “estimated global consumption of the controlled substances”, the Secretary-General, as depositary, only notified

the entry into force of the Protocol after having obtained confirmation that, in the light of information provided by the parties, the number of instruments deposited exceeded the required figure. The information was confirmed prior to 1 January 1989 and the Protocol entered into force on that date, as provided for in article 16 (1).

In the case of the *Food Aid Convention, 1999*, entry into force would occur once a specified threshold of aid commitments was reached. Article XXIV (a) reads:

This Convention shall enter into force on 1 July 1999 if by 30 June 1999 the Governments, whose combined commitments, as listed in paragraph (e) of Article III, equal at least 75% of the total commitments of all governments listed in that paragraph, have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, and provided that the Grains Trade Convention, 1995 is in force.<sup>64</sup>

The conditions for the entry into force may be even more complex. Thus, article 58 (1) and (3) of the *International Cocoa Agreement, 2001*, provides:

#### Entry into force

1. This Agreement shall enter into force definitely on 1 October 2003, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.

[...]

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement

<sup>64</sup> See also the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987* (article 16), which specifies a date for entry into force provided that certain conditions are fulfilled.

into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.<sup>65</sup>

Commodity agreements have traditionally employed complex entry into force provisions, which reflect the need for a balance between exporter and importer (or producer and consumer) interests. This ensures that both are represented in adequate numbers, in particular the major ones, but makes commodity agreements difficult to bring into force definitively (see “Provisional entry into force of a treaty” below).

(See the *Summary of Practice*, paragraph 236, for calculation by the depositary of date of initial entry into force of a treaty.)

### ***Entry into force for a State after the treaty has entered into force***

When a State gives its consent to be bound after the treaty has entered into force, it will enter into force for that State on the date of deposit of the instrument expressing consent, unless the treaty provides otherwise (see article 24(3) of the *Vienna Convention, 1969*).

Treaties normally include provisions for entry into force for a State when the treaty has already entered into force. Generally, they provide that the treaty will enter into force after a specified period has elapsed following deposit. This is often the same period as for the original entry into force of the treaty after receipt of the required number of instruments of ratification, acceptance, approval or accession. For example:

*The International Convention for the Suppression of the Financing of Terrorism, 1999*, article 26(2) reads:

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Similarly, the *Rome Statute of the International Criminal Court, 1998*, article 126 (2):

2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

<sup>65</sup> See also the *International Coffee Agreement, 2000* (article 45).

Likewise, the *United Nations Convention on the Law of the Sea, 1982*, stipulates in article 308 (2):

2. For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.

(See the *Summary of Practice*, paragraphs 244 through 247, for calculation of the date of entry into force for a State after the treaty has entered into force.)

## **2. Provisional entry into force of a treaty**

Some treaties provide for provisional entry into force. In such cases, States that are ready to implement the obligations under a treaty may do so among themselves, without waiting for the completion of the requirements for its formal entry into force. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in such a manner.

Provisional entry into force is a mechanism usually employed in commodity agreements. Entry into force requirements of commodity agreements are so stringent that initially they are often brought into force provisionally followed by subsequent definitive entry into force.<sup>66</sup> This practical approach allows a greater opportunity for the treaty to enter into force earlier since the time period stipulated for the definitive entry into force is generally too short. It also allows those parties that provisionally apply the treaty to take part in the decision with regard to the definitive or provisional coming into force of the treaty. See for example article 58 the *International Cocoa Agreement, 2001*:

Entry into force

[...]

2. This Agreement shall enter into force provisionally on 1 January 2002, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this

<sup>66</sup> See the entry into force process of the *International Natural Rubber Agreements, 1979, 1987 and 1994*, and the *International Coffee Agreements, 1962, 1968, 1976, 1983 and 1994*. Also note that from 1972 there have been six consecutive *International Cocoa Agreements*, five of which have not definitively entered into force.



Agreement when it enters into force. Such Governments shall be provisional Members.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 57.<sup>67</sup>

In accordance with this provision, a meeting of Governments and an international organization held in London on 4 June 2003 decided to bring the Agreement into force as of 1 October 2003 among the Governments and the international organization that had deposited instruments of ratification, acceptance, approval or accession, or notifications of provisional application of the Agreement.

### **3. Entry into force of annexes, amendments, and regulations**

Many multilateral treaties, particularly those concluded in recent years, have built-in amendment procedures for annexes, amendments,<sup>68</sup> and regulations that include entry into force provisions. Commonly, such provisions also specify that the annexes, amendments, and regulations only enter into force for those parties that have accepted them or enter into force for all parties that have not objected to them.

**a.** Where parties require clear checks and balances on the entry into force of annexes and amendments of annexes, detailed procedures are incorporated

<sup>67</sup> Other examples of treaties with provisional entry into force clauses include the *International Sugar Agreement, 1992* (article 40); the *International Tropical Timber Agreement, 1994* (article 41); the *Grains Trade Convention, 1995, 1994* (article 28); the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997* (article 18); the *International Coffee Agreement, 2000* (article 45); and the *Agreement Establishing the Terms of Reference of the International Jute Study Group, 2001* (article 23).

<sup>68</sup> For a detailed discussion of amendment provisions see section III, "Amendment, Revision and Modification", below.

in treaties for this purpose. The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998*, article 22 reads:

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Annexes shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of an additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (c) below; and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b) above.

4. Except in the case of Annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention.

5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex III:

(a) Amendments to Annex III shall be proposed and adopted according to the procedure laid down in Articles 5 to 9 and paragraph 2 of Article 21;



(b) The Conference of the Parties shall take its decisions on adoption by consensus;

(c) A decision to amend Annex III shall forthwith be communicated to the Parties by the Depository. The amendment shall enter into force for all Parties on a date to be specified in the decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.<sup>69</sup>

Similarly, the *Convention for the Suppression of the Financing of Terrorism, 1999*, includes a provision for the amendment of the annex to the Convention. Article 23 (4) regulates the entry into force of amendments to the annex:

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

The *United Nations Convention against Transnational Organized Crime, 2000*, article 39 (4) and (5) provides:

Amendment

[...]

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the

provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.<sup>70</sup>

b. The general tendency is for treaties to provide for entry into force of amendments (or annexes) only for those parties that have accepted them. This reflects the general reluctance of States to be bound by amendments that they have not accepted. This approach, however, often creates significant problems of interpretation and implementation since it could establish situations whereby States can be parties to different regimes under a single treaty.

The *Amendment to Article 43 (2) of the 1989 Convention on the Rights of the Child, 1995*, increasing the membership of the Committee on the Rights of the Child from ten to eighteen experts, entered into force when it was accepted by a two-thirds majority of States parties, on 18 November 2002 in accordance with article 50(2) of the Convention. Pursuant to article 50 (3) the amendments only bind those States parties that have notified their acceptance. This would have created an impossible situation where the Committee would have consisted of ten members for some States parties and eighteen members for others. A practical approach was taken by States parties to the Convention in this case and the amendment was deemed to bind all parties. Where amendment provisions are negotiated, it is important to anticipate this type of problem and draft the provisions accordingly.

Ideally, for the sake of clarity and simplicity, provisions regarding the entry into force of amendments (or annexes) should include either an automatic entry into force for all parties (e.g., the amendment shall bind all the parties after a specific number of parties, as of the date that the amendment was approved, have expressed their consent to be bound by the amendment) or an entry into force for all parties based on non-objection by any party (e.g., the amendment enters into force for all the parties after circulation of the proposed amendment to all parties and within a specified number of months none of the parties have objected to it).

The first type is reflected in the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, article VII (6):

6. Amendments shall enter into force for all States Parties 30 days after the deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.

<sup>70</sup> See also the *Agreement for Establishing the Asia-Pacific Institute for Broadcasting Development, 1977* (article 13), and the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* (article 17).

<sup>69</sup> See also the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 22).

The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*, article XV(3) states:

3. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all the States Parties referred to under subparagraph (b) below:

- (a) When adopted by the Amendment Conference by a positive vote of a majority of all States Parties with no State Party casting a negative vote; and
- (b) Ratified or accepted by all those States Parties casting a positive vote at the Amendment Conference.

The second type is reflected in the *Agreement concerning the adoption of uniform conditions of approval and reciprocal recognition of approval for motor vehicle equipment and parts, 1958*. Regarding amendment of regulations, article 12 states:

#### Article 12

The Regulations to be annexed to this Agreement may be amended in accordance with the following procedure:

1. Any Contracting Party applying a Regulation may propose one or more amendments to it. The text of any proposed amendment to a Regulation shall be transmitted to the Secretary-General of the United Nations, who shall transmit it to the other Contracting Parties. The amendment shall be deemed to have been accepted unless within a period of three months following this notification a Contracting Party applying the Regulation has expressed an objection, in which case the amendment shall be deemed to have been rejected. If the amendment is deemed to have been accepted, it shall enter into force at the end of a further period of two months.

2. Should a country become a Contracting Party between the time of the communication of the proposed amendment by the Secretary-General and its entry into force, the Regulation in question shall not enter into force for that Contracting Party until two months after it has formally accepted the amendment or two months after the lapse of a period of three months since the communication to that Party by the Secretary-General of the proposed amendment.

The *Convention on Psychotropic Substances, 1971*, article 30 (2):

2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If, however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 22 (3) reads:

Adoption and amendment of annexes

[...]

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

- (a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;
- (b) Any Party that is unable to accept an additional annex shall so notify the depositary, in writing, within one year from the date of communication by the depositary of the adoption of the additional annex. The depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of any additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and
- (c) On the expiry of one year from the date of the communication by the depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b).

Due to the need for organizational structures to be applicable to all parties, treaties establishing international organizations include amendment procedures automatically binding on all members. Accordingly, once an amendment has been approved by a specific percentage of members the amendment binds all, including those that did not vote for or ratify it. Article 108 of the *Charter of the United Nations* reads:

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional

processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.<sup>71</sup>

- c. Exceptionally, the amendment itself may contain the entry into force provision, generally to expedite its own entry into force. Article 3 of the *Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, 1999*:

1. This Amendment shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.<sup>72</sup>

This particular situation is exceptional. Concerned that the ozone hole had reached record proportions the States involved wished to see a less onerous procedure by which control measures could quickly be extended to new ozone-depleting substances. They intended that the amendment would enter into force quickly and drafted the amendment's entry into force provision accordingly.

#### ***Determining the date when the amendment or annex enters into force***

Determining the date of entry into force of amendments and annexes has caused in the past difficulties for the Secretary-General as depositary.

- a. Some treaties provide for entry into force when a specified proportion (e.g., three-quarters, two-thirds) of all the parties has deposited their instruments expressing their consent to be bound (e.g., acceptance). Often, these treaties do not specify whether the number of acceptances is calculated on the basis of the number of parties at the time of adoption of the amendment or at the time of its acceptance. This type of clause creates confusion for States.

The *Convention against Torture and other Cruel, Inhuman or Degrading, Treatment or Punishment, 1984*, provides in article 29(2):

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two-thirds of the States Parties

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<sup>71</sup> See also the *Constitution of the International Labour Organization, 1946* (article 36); the *Constitution of the World Health Organization, 1946* (article 73); the *Convention establishing the World Intellectual Property Organization, 1967* (article 17); and the *Statute of International Atomic Energy Agency, 1956* (article 18).

<sup>72</sup> See also the *Amendments to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer of 29 June 1990* (article 2); of 25 November 1992 (article 3); and of 17 September 1997 (article 3).

to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

Likewise, the *Convention on the Rights of the Child, 1989*, which contains additional complexities whereby the approval of the General Assembly as well as a two-thirds majority of the States parties are required for entry into force of amendments, does not specify when the two-thirds proportion is to be calculated. Specifically, article 50 (2), reads:

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

See also the *Amendments to the Agreement Establishing the Asia-Pacific Institute for Broadcasting Development, 1999*, article 14(1):

1. [...] Amendments shall, subject to paragraph 2 of this article enter into force for all Contracting Parties three months after their acceptance by a two-thirds majority of the Contracting Parties.

Similar wording appears in the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992*, article 21 (4):

4. An amendment to the present Convention shall be adopted by consensus of the representatives of the Parties to this Convention present at a meeting of the Parties, and shall enter into force for the Parties to the Convention which have accepted it on the ninetieth day after the date on which two thirds of those Parties have deposited with the Depositary their instruments of acceptance of the amendment. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of acceptance of the amendment.<sup>73</sup>

Equally, using a seven-eighths proportion, the *Rome Statute of the International Criminal Court, 1998*, article 121, paragraph 4, provides:

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after the instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

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<sup>73</sup> Almost identical language is found in the *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999* (article 18).



Entry into force provisions should specify the basis on which established percentages are to be calculated in order to avoid confusion relating to the time of entry into force. When a treaty is silent on this matter, the practice of the Secretary-General as depositary is to calculate the number of acceptances on the basis of the number of parties to the treaty at the time of acceptance. This practice is referred to as the “moving target” or the “current time” approach.

(See also the *Treaty Handbook*, section 4.4.3.)

**b.** A more practical approach is reflected in certain treaties that employ a formula that includes either a consistent number of votes required for all the amendments or a proportion with a clear statement of the date of calculation of the proportion. This is a preferred approach. The *Agreement on the Privileges and Immunities of the International Criminal Court, 2002*, article 36 (5) states:

5. An amendment shall enter into force for States Parties which have ratified or accepted the amendment sixty days after two thirds of the States which were Parties at the date of adoption of the amendment have deposited instruments of ratification or acceptance with the Secretary-General.

The *Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, 1999*, article 3 (1) provides:

1. This Amendment shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

#### L. REGISTRATION AND PUBLICATION

Pursuant to Article 102 of the *Charter of the United Nations*, States Members of the United Nations have a legal obligation to register treaties and international agreements entered into after the entry into force of the *Charter* with the

Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements.<sup>74</sup> Article 102 of the *Charter* provides:

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.

The objective of Article 102 is to ensure that all treaties and international agreements remain in the public domain and thus contribute to eliminating secret diplomacy. This provision, which could be traced to Article 18 of the Covenant of the League of Nations, was designed to eliminate secret diplomacy, a factor that was considered to be a major cause of international instability. A treaty or an international agreement cannot be invoked before the International Court of Justice (ICJ) or any other organ of the United Nations if it is not registered.<sup>75</sup>

Registration provisions are more often found in older treaties than in treaties drafted more recently. The *Protocol to amend the 1921 Convention for the Suppression of the Traffic in Women and Children and the 1933 Convention for the Suppression of the Traffic in Women of Full-Age, 1947*, provides in article VI:

In accordance with paragraph 1 of Article 102 of the Charter of the United Nations and the regulations pursuant thereto adopted by the General Assembly, the Secretary-General of the United Nations is authorized to effect registration of the present Protocol and the amendments made in the Conventions by this Protocol on the respective dates of their entry into force, and to publish the Protocol and the amended Conventions as soon as possible after registration.<sup>76</sup>

Similarly, article XIX of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, explicitly provides:

<sup>74</sup> See General Assembly Regulations to give effect to Article 102 (*Treaty Series*, volume 859/860, p. VIII) and General Assembly resolution 97(I) of 14 December 1946, as amended by resolutions 364 B (IV) of 1 December 1949; 482 (V) of 12 December 1950; 33/141 of 19 December 1978; and 52/153 of 15 December 1997.

<sup>75</sup> It is noted that, the ICJ in the case of *Qatar v. Bahrain* considered the terms of the 1987 double Exchange of Letters between Qatar and Saudi Arabia and between Bahrain and Saudi Arabia, a treaty that was not registered. The ICJ, in the same case, accepted as a treaty Minutes from a meeting held in December 1990 that were registered by one of the parties less than two weeks before application to the ICJ. The ICJ relied on the Exchange of Letters and the Minutes to decide on the question of its own jurisdiction over the dispute (*Qatar v. Bahrain*, 1994 I.C.J. 112).

<sup>76</sup> See also the *Protocol Amending the 1904 International Agreement for the Suppression of the White Slave Traffic, 1904*, and the *1910 International Convention for the Suppression of the White Slave Traffic, 1909* (article 7); and the *Protocol Amending the 1926 Slavery Convention, 1953* (article 4).



The Present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Also the *Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950*, article XVIII states:

1. In accordance with Article 102 of the Charter of the United Nations, this Agreement shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Likewise, article 21 of the *Convention on the Reduction of Statelessness, 1961*, provides:

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

Given the existence of Article 102 of the *Charter of the United Nations* and the fact that the United Nations registers *ex officio* multilateral treaties that designate the Secretary-General as depositary, the inclusion of a registration provision in a multilateral treaty to be deposited with the Secretary-General is unnecessary (see the *Vienna Convention, 1969*, articles 77 (1) (g) and 80).

(Extensive substantive and procedural information on registering and filing and recording treaties may be found in the *Treaty Handbook*, sections 5 and 6.)

## M. AUTHENTIC TEXTS

Most multilateral treaties are concluded in more than one language. Accordingly, those treaties often specify the languages of the authentic texts.

Treaties concluded under the auspices of the United Nations normally provide in their final clauses that the texts are authentic in all the official languages of the United Nations.<sup>77</sup> Today, the official languages are Arabic, Chinese, English, French, Russian and Spanish. This is the current practice. See article 38 of the *Framework Convention on Tobacco Control, 2003*, which reads:

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

<sup>77</sup> The *Convention on the Privileges and Immunities of the United Nations, 1946*, reflecting the situation of the early years of the United Nations is authentic in English and French only.

In the case of treaties adopted by United Nations regional commissions, the authentic texts are generally in the official languages of the commissions concerned.<sup>78</sup> Taking into account recent developments in the depositary practice and consistent with ST/SGB/2001/7, the Secretary-General as depositary strongly insists that every effort shall be made to ensure that the texts of treaties to be deposited with the Secretary-General are concluded only in the official languages of the Organization. Any deviation from this practice could set an unmanageable precedent in an Organization with 191 members.

It is rare that treaties do not contain provisions on the authentic texts.<sup>79</sup> It is a desirable practice that they do contain such provisions.

## II. APPLICATION OF TREATIES

### A. TERRITORIAL LIMITATIONS ON APPLICATION OF TREATIES

The basic principle is that a treaty will be binding upon a State in respect to its entire territory. This principle is stated in article 29 of the *Vienna Convention, 1969*:

Territorial scope of treaties

Unless a different intention appears from the treaty or it is otherwise established, a treaty is binding upon each party in respect to its entire territory.

This basic principle becomes difficult to apply in certain situations. Parts of the territory of a State may, under its domestic law, be subject to a separate legal regime. This may be the case of a metropolitan territory as compared to its non-metropolitan territories, colonies, overseas territories or dependencies. When such non-metropolitan territories exist, it may be difficult to apply the provisions of a treaty to them in the same manner as to the metropolitan territory. There may be situations where extensive consultations are required with such non-metropolitan territories due to the existence of a quasi-independent legal regime in such territories. The same may apply to non-autonomous or non-independent territories whose foreign relations are under the international responsibility of certain States.

<sup>78</sup> As an exception to this general rule, the Secretary-General accepted the use of German also as an authentic text language for the *European Agreement concerning the International Carriage of Goods by Inland Waterways, 2000*. However, this was stated by the Secretary-General to be a case that would not set a precedent. The Secretary-General could refuse to accept a treaty in deposit if it were concluded in languages other than the official languages.

<sup>79</sup> See the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950*.

Many former territories are now independent, rendering the instances of application of treaties to non-metropolitan territories fewer and less complex. However, a number of former colonial powers still maintain distant colonies.

### 1. Provisions on the optional extension of territorial application

Provisions for the optional extension of territorial application was a common practice in multilateral treaties before the modern period of decolonization. Article XII of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, reads:

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.<sup>80</sup>

Article 40 of the *Convention relating to the Status of Refugees, 1951*, provides:

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.<sup>81</sup>

Furthermore, article 48(1) of the *International Coffee Agreement, 2000*, provides:

Any Government may, at the time of signature or deposit of an instrument of ratification, acceptance, approval, provisional application or accession, or at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall extend to any of the territories for whose international relations it is responsible; this Agreement shall extend to the territories named therein from the date of such notification.

### 2. Provisions on the optional exclusion from territorial application

Where it was considered more practical to exclude territories from the application of a treaty, provision was made, especially in treaties pre-dating 1960, for the optional exclusion of all or some territories of a State from the application of the treaty. Article 12 of the *Convention on the Recovery Abroad of Maintenance, 1956*, states:

Territorial application

The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.<sup>82</sup>

### 3. Provisions requiring exercise of territorial application to all territories

Consistent with article 29 of the *Vienna Convention, 1969*, a State becomes party to a treaty on behalf of all its territories. Some treaties specifically provide for the application to all territories. See article IX of the *Convention on the International Right of Correction, 1953*:

The provisions of the present Convention shall extend to or be applicable equally to a contracting metropolitan State and to all the territories, be they Non-Self Governing, Trust or Colonial Territories, which are being

<sup>80</sup> See also the *Convention on the Intergovernmental Maritime Consultative Organization, 1948* (article 58); the *Agreement Providing for the Provisional Application of the Draft International Customs Convention on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, 1949* (article II); the *Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950* (article XIII); and the *Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), 1978* (article 7).

<sup>81</sup> See also the *Convention relating to the Status of Stateless Persons, 1954* (article 36).

<sup>82</sup> See also the *Havana Charter for an International Trade Organization, 1948* (article 104); the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, 1949* (article XIV); and the *Convention on the Declaration of Death of Missing Persons, 1950* (article 13).

administered or governed by such metropolitan State.<sup>83</sup>

In view of article 29 of the *Vienna Convention, 1969*, which codified customary international law, a provision of this nature would be superfluous.

#### **4. Provisions on territorial application where consent of a non-metropolitan territory may be required by domestic law**

Where the previous consent of non-metropolitan territories may be required by the domestic law of a prospective State party, a treaty may be drafted to accommodate this need. Article 27 of the *Convention on Psychotropic Substances, 1971*, provides:

The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such territory is required by the Constitution of the Party or of the territory concerned or required by custom. In such case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.<sup>84</sup>

#### **5. Absence of provisions on territorial application**

Most treaties do not contain specific territorial application clauses. In principle, the absence of a territorial clause obliges a State to apply the treaty to its entire territory (see article 29 of the *Vienna Convention, 1969*).

Certain States in some limited circumstances may not wish to apply a treaty to their entire territory. A practice has been developed by which such States specify to which of their overseas territories the treaty will apply. When becoming a party to the treaty, such a State includes in its instrument a statement to the effect

<sup>83</sup> See also the *Articles of Agreement of the International Monetary Fund, 1945* (article XXXI, section 2, (g)); *Articles of Agreement of the International Bank for Reconstruction and Development, 1945* (article XI, section 2, (g)); and the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950* (article 23).

<sup>84</sup> See also the *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in, and Use of Opium, 1953* (article 20); the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956* (article 12); and of the *Single Convention on Narcotic Drugs, 1961* (article 42).

that the treaty (or some of its provisions) either applies only to the metropolitan territory, or that it extends also to certain territories.

Exceptionally, a State exercising the foreign affairs responsibility for one of its territories may declare that a treaty does not apply to that territory.

*Practice of the United Kingdom, the Netherlands, New Zealand and Denmark*

*United Kingdom.*<sup>85</sup> When expressing consent to be bound, the United Kingdom may declare in writing to the depositary to which, if any, of its territories the treaty will extend. If the instrument expressing consent to be bound refers only to the United Kingdom of Great Britain and Northern Ireland, it applies only to the metropolitan territory.

*The Netherlands.* The Netherlands tends to make declarations regarding territorial application rather than territorial exclusion. Specifically, the Netherlands often declares in its instrument expressing consent to be bound that such declaration is “[f]or the Kingdom in Europe, the Netherlands Antilles and Aruba.” See the ratification of the Netherlands dated 22 May 2002 to the *Optional Protocol to the 1979 Convention on the Elimination of all Forms of Discrimination against Women, 1999*, and its acceptance dated 7 February 2002 to the *Convention on the Safety of United Nations Associated Personnel, 1994*. The Netherlands accepted the *Convention on the Rights of the Child, 1989*, for the Kingdom in Europe on 6 February 1995, and subsequently extended territorial application to Netherlands Antilles on 17 December 1997 and to Aruba on 18 December 2000.<sup>86</sup>

*New Zealand.* New Zealand makes declarations of territorial application and territorial exclusion on a case-by-case basis. For example, New Zealand, by communication to the Secretary-General dated 10 April 2002, declared that “[c]onsistent with international law, New Zealand regards all treaty actions as extending to Tokelau as a non-self-governing territory of New Zealand unless express provision to the contrary is included in the relevant treaty instrument.” When New Zealand ratified on 19 July 2002 the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000*, it declared that the ratification would not extend to Tokelau.

<sup>85</sup> See A. Aust, *Modern Treaty Law and Practice* (2000), p. 166.

<sup>86</sup> The Government of the Netherlands informed the Secretary-General on 30 December 1985 that “the island of Aruba which was part of the Netherlands Antilles would obtain internal autonomy as a separate country within the Kingdom of the Netherlands as of 1 January 1986.” The treaties concluded by the Kingdom, which applied to the Netherlands Antilles, including Aruba, continued to apply to the Netherlands Antilles (of which Aruba is no longer a part) and to Aruba, after 1 January 1986.



*Denmark*. When expressing its consent to be bound, Denmark tends to include the entire Kingdom of Denmark. In a communication received on 22 July 2003, the Government of Denmark informed the Secretary-General that "... Denmark's ratifications normally include the entire Kingdom of Denmark including the Faroe Islands and Greenland." On occasion the Government of Denmark has made territorial exclusions. For example, when the Government of Denmark ratified the *Rome Statute of the International Criminal Court, 1998*, on 21 June 2001 it declared that "[u]ntil further notice, the Statute shall not apply to the Faroe Islands or Greenland."

A practice has developed in relation to the People's Republic of China whereby it applies to a specific region a treaty that was applicable under a previous controlling power even though the People's Republic of China itself is not party to such a treaty. Such is the case of the People's Republic of China in respect of Hong Kong and Macao. When Hong Kong became a Special Administrative Region under the sovereignty of the People's Republic of China, the Government of the People's Republic of China transmitted to the Secretary-General a communication relating to the status of Hong Kong from 1 July 1997.<sup>87</sup> Similarly, the Government of the People's Republic of China transmitted to the Secretary-General a communication relating to the status of Macao from 20 December 1999.<sup>88</sup> Attached to the communications were two annexes: a) Annex I listing the treaties to which China was then a party that would apply with effect from 1 July 1997 to the Hong Kong Special Administrative Region and from 20 December 1999 to the Macao Special Administrative Region, respectively, and b) Annex II listing the treaties to which China was not a party and which applied to Hong Kong before 1 July 1997 that would continue to apply to the Hong Kong Special Administrative Region, and which applied to Macao before 20 December 1999 that would continue to apply to the Macao Special Administrative Region, respectively. For treaties that were not listed on either Annex it is necessary to determine whether China made a declaration specifying that the treaty would apply to the Hong Kong Special Administrative Region or the Macao Special Administrative Region or both.

(For the Secretary-General's practice regarding territorial application clauses, see paragraphs 263 to 285, of the *Summary of Practice*.)

<sup>87</sup> See the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed on 19 December 1984" in the historical information, note 2 under "China", in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER/E/21), status as at 31 December 2002.

<sup>88</sup> See the "Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987" in the historical information, note 3 under "China", in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER/E/21), status as at 31 December 2002.

## 6. Federal clauses

Declarations of territorial application are distinct from declarations made under "federal clauses" in treaties whose subject matter falls within the legislative jurisdiction of constituent States, provinces or other territorial units. Article 35 (1) and (2) of the *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, provide:

Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. Such declarations are to state expressly the territorial units to which this Convention extends.<sup>89</sup>

Federal clauses are mostly used in treaties on commercial law, private law or private international law, such as those elaborated by the United Nations Commission on Trade Law (UNCITRAL) and the Institute for the Unification of Private Law (UNIDROIT).

## B. APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT MATTER

Article 30 of the *Vienna Convention, 1969*, provides:

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation

<sup>89</sup> See also the *International Convention on Arrest of Ships, 1999* (article 13); and the *United Nations Convention on Contracts for the International Sale of Goods, 1980* (article 93).



under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

- (a) as between States parties to both treaties the same rule applies as in paragraph 3;
- (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

Article 30 of the *Vienna Convention, 1969*, makes a distinction between successive treaties relating to the same subject matter concluded between the same parties and successive treaties relating to the same subject matter between different parties.

In the case of successive treaties relating to the same subject matter concluded among the same parties, the principle of *lex posterior derogat priori* applies.<sup>90</sup> Accordingly, when the parties to the earlier treaty are also parties to the later treaty but the earlier treaty is not terminated or suspended under article 59 of the *Vienna Convention, 1969*,<sup>91</sup> the earlier treaty applies to the extent that its provisions are compatible with those of the later treaty. Thus, unless there is evidence of a contrary intention, the parties are presumed to have intended to terminate or modify the earlier treaty when they conclude a subsequent treaty that is incompatible with the earlier one.

In the case of successive treaties relating to the same subject matter between different parties, the same rule applies when the parties to the later treaty do not include all the parties to the earlier one, but only among parties to both treaties.

<sup>90</sup> Article 30 of the *Vienna Convention, 1969*, refers to successive treaties "relating to the same subject matter", which is interpreted as treaties having the same general character. However, when a treaty shares the special character with respect to another treaty, in the event of conflict, the *lex specialis* prevails, unless that treaty expresses an intention, express or implied, that it should be otherwise.

<sup>91</sup> See article 59 of the *Vienna Convention, 1969*, on termination or suspension of the operation of a treaty implied by conclusion of a later treaty.

As between a party to both treaties and a party to only one of the treaties, the treaty that both are parties to governs their mutual rights and obligations.<sup>92</sup>

### *Provisions on the application of successive treaties*

Where negotiating States wish to establish the priority in the application of successive treaties on the same subject-matter, final clauses will contain provisions on the relationship of the new treaty and existing or future treaties on the same subject matter.

The issue of the relationship between successive treaties increasingly arises because of the greater number and complexity of treaties entered into by States. The general rules specified in article 30 of the *Vienna Convention, 1969*, may not be sufficient to address all the problems arising with respect to the priority of the application of a particular treaty. Accordingly, parties to a treaty may decide to address the relationship between the provisions of that treaty and those of any other treaty relating to the same subject matter, including in the treaty in question clauses or provisions that determine the priority in the application of successive treaties. One way to accomplish this is to include provisions in the treaty specifying its relationship to a prior treaty, a future treaty or any treaty, past or future.

The *Charter of the United Nations* establishes the priority of the provisions of the Charter over any other international agreement, existing or future, as set forth in Article 103:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Also a treaty may specify that all or some of its provisions shall prevail over previously concluded treaties in general or in relation to a specific treaty. The *Food Aid Convention, 1999*, in its article XXVI, provides:

International Grains Agreement

This Convention shall replace the Food Aid Convention, 1995, as extended, and shall be one of the constituent instruments of the International Grains Agreement, 1995.

The *United Nations Convention on the Law of the Sea, 1982*, precisely explains its relationship to other treaties in article 311:

<sup>92</sup> Without prejudice to article 41 relating to "Agreements to modify multilateral treaties between certain of the parties only" and article 59 on "Termination or suspension of the operation of a treaty implied by conclusion of a later treaty" of the *Vienna Convention, 1969*.

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

Where negotiating States do not wish the provisions of the treaty in question to prevail over a previously concluded treaty or even a later treaty, they may specify that some or all of the provisions of the treaty shall not prevail. For example, the *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, article 38 (1) reads as follows:

Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

The *United Nations Convention on Contracts for the International Sale of Goods, 1980*, article 90 provides:

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties, to such agreement.

The *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, 1998*, article 10 provides:

Relationship to Other International Agreements

This Convention shall not affect the rights and obligations of States Parties deriving from other international agreements or international law.

Where existing higher standards are to be preserved, a treaty may specify that there should be no conflict with other treaties that provide for such higher standards. These provisions are most often found in human rights and disarmament treaties. The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*, article XIII states:

Relation to other international agreements

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and under the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972.

The *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, provides in article 2:

Relationship with other international agreements

Nothing in this Convention or its annexed Protocols shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law applicable in armed conflict.

The *Convention on the Elimination of all Forms of Discrimination against Women, 1979*, states in article 23:

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

### C. SETTLEMENT OF DISPUTES

The Manila Declaration on the Peaceful Settlement of Disputes, part I.9, states, *inter alia*, that States should include “in bilateral agreements and multilateral

conventions, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.<sup>93</sup>

Multilateral treaties normally contain detailed dispute resolution provisions. Some contain only elementary provisions. If a dispute, controversy or claim were to arise out of a treaty (for example, due to breach, error, fraud, performance issues, etc.) these provisions become extremely important. Although not common, dispute resolution provisions have been relied upon to resolve important issues by States parties to treaties.

Treaties may provide for various dispute resolution mechanisms such as negotiation, consultation, conciliation, mediation and good offices, panel procedures, arbitration or judicial settlement, such as recourse to the International Court of Justice.

Usually the first resort is to non-formal means of dispute resolution with judicial settlement being the final resort.

Parties to a treaty may try to resolve a dispute arising under that treaty by direct negotiation or consultation amongst themselves in private, usually through diplomatic channels. This allows great flexibility, with the parties controlling the process. In fact, the vast majority of disputes are resolved in this manner away from the limelight. Mediation and good offices involve a third person who facilitates a compromise or provides impartial advice to help resolve the dispute. Two attributes of arbitration and judicial settlement are (1) a prior agreement to submit disputes to a third party for a decision and (2) a decision by the third party that is legally binding on the parties. In many cases parties favour arbitration rather than judicial settlement because the parties have more control over the process and it is expeditious. The advantages of the judicial settlement mechanism include having the court or tribunal and procedures already established as well as judges available to hear the disputes. Recourse to the International Court of Justice has the added benefit to the parties of being funded by member contributions to the United Nations budget so that parties do not shoulder the full costs of the court (as they would with an arbitration tribunal and with other judicial bodies).

Article 33 of the *Charter of the United Nations* enunciates the basic principle enshrined in Article 2 (3) of the *Charter* that disputes must be resolved through peaceful means and lists the most common dispute settlement methods:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

<sup>93</sup> See General Assembly resolution 37/10 of 15 November 1982.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

a. Negotiation followed by arbitration with subsequent recourse to the International Court of Justice is reflected in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*. Its article 92 provides:

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.<sup>94</sup>

A policy-oriented solution through the intervention of the Assembly of Parties prior to recourse to the formal mechanisms is reflected in the *Rome Statute of the International Criminal Court, 1998*. Here a dispute must be resolved by negotiation during a three-month period followed by referral to the Assembly of States parties with subsequent referral to the International Court of Justice. Article 119 of the Statute provides:

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of

<sup>94</sup> See also the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (article 29); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (article 30); and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000* (article 20).



the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Some treaties also allow for a wide range of dispute mechanisms. For example, the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, provides in article 32:

#### Settlement of Disputes

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

**b.** While most dispute resolution mechanisms are found in the final clauses of treaties, provisions for settlement of disputes may be found elsewhere in the treaty instead. See the *International Coffee Agreement, 2000*, which regulates the settlement of disputes in its chapter XIII entitled “Consultations, disputes and complaints” and not in its chapter XIV “Final provisions.” Article 42 of this Agreement provides:

#### Disputes and complaints

(1) Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any Member party to the dispute, be referred to the Council for decision.

(2) In any case where a dispute has been referred to the Council under the provisions of paragraph (1) of this Article, a majority of Members, or Members holding not less than one third of the total votes, may require the Council, after discussion, to seek the opinion of the advisory panel referred to in paragraph (3) of this Article on the issues in dispute before giving its decision.

(3) (a) Unless the Council unanimously agrees otherwise, the advisory panel shall consist of:

(i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) two such persons nominated by the importing Members; and

(iii) a chairman selected unanimously by the four persons nominated under the provisions of subparagraphs (i) and (ii) or, if they fail to agree, by the Chairman of the Council.

(b) Persons from countries whose Governments are Contracting Parties to this Agreement shall be eligible to serve on the advisory panel.

(c) Persons appointed to the advisory panel shall act in their personal capacities and without instructions from any Government.

(d) The expenses of the advisory panel shall be paid by the Organization.

(4) The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.

(5) The Council shall rule on any dispute brought before it within six months of submission of such dispute for its consideration.

(6) Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council which shall make a decision on the matter.



(7) No Member shall be found to have been in breach of its obligations under this Agreement except by a distributed simple majority vote. Any finding that a Member is in breach of its obligations under this Agreement shall specify the nature of the breach.

(8) If the Council finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to other enforcement measures provided for in other Articles of this Agreement, by a distributed two-thirds majority vote, suspend such Member's voting rights in the Council and its right to have its votes cast in the Executive Board until it fulfils its obligations, or the Council may decide to exclude such Member from the Organization under the provisions of Article 50.

(9) A Member may seek the prior opinion of the Executive Board in a matter of dispute or complaint before the matter is discussed by the Council.

The *United Nations Convention against Transnational Organized Crime, 2000*, establishes a regime for the settlement of disputes in its article 35:

#### Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Part XV (articles 279 through 299) of the *United Nations Convention on the Law of the Sea, 1982*, contains very detailed voluntary and compulsory methods of settlement of disputes, including the jurisdiction of the International Tribunal for the Law of the Sea established by the Convention. Part XV requires that States parties settle any dispute between them concerning the interpretation or application of the Convention by peaceful means in accordance with article 2 (3) of the *Charter of the United Nations* and by the means indicated in article 33 (1) of the *Charter*. If no settlement is reached, the dispute is submitted at the request of any party to the dispute to a court or tribunal having jurisdiction in this regard in accordance with article 286. Article 287(1) of the Convention defines those courts or tribunals as:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI [of the Convention];
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII of the Convention;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

#### **Compliance mechanisms**

In certain areas of international law there is a trend toward assisting the parties with implementing treaty obligations rather than just strictly enforcing the treaty provisions and for treaty monitoring compliance rather than dispute resolution. This is evident in the human rights area and in the environmental field.

Some treaties, such as environmental treaties contain complex provisions for monitoring compliance and providing assistance to the parties with a preventative view to avoiding disputes. The following three treaties illustrate this point. The reporting requirements, however, are handled by the treaty secretariats, not the depositary.

The *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, compliance regime consists of a compliance committee made up of a facilitative branch and an enforcement branch. The facilitative branch provides advice and assistance to parties to promote compliance. This branch also provides "early-warning" of cases where a party is in danger of not meeting its emissions targets. In response to problems, the facilitative branch may make recommendations and also mobilize financial and technical resources to help the parties comply. Each party must submit a national communication to demonstrate its compliance with its commitments under the protocol. Expert

review teams analyse the information and prepare a report to the conference of parties. There is a Subsidiary Body for Scientific and Technological Advice as well as a Subsidiary Body for Implementation. Additionally, a financial mechanism provides financial resources on a grant or concessory basis including for the transfer of technology.

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989*, contains specific provisions for the monitoring of implementation and compliance. A number of articles in the Convention oblige parties to take appropriate measures to implement and enforce their provisions, including measures to prevent and punish conduct in contravention of the Convention. In order to assist countries to manage or dispose of their wastes in an environmentally sound way, the secretariat cooperates with national authorities in developing national legislation, setting up inventories of hazardous wastes, strengthening national institutions, assessing the hazardous waste management situation, and preparing hazardous waste management plans and policy tools. It also provides legal and technical advice to countries in order to solve specific problems related to the control and management of hazardous wastes. Through training and technology transfer, developing countries and countries with economies in transition gain the skills and tools necessary to properly manage their hazardous wastes.

In the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, emphasis is placed on the sharing of information among the parties, aided by the Ozone Secretariat. Parties cooperate regarding research, development, public awareness and exchange of information. There are requirements to transfer technology and to take into account in particular the needs of developing countries. A financial mechanism provides financial and technical cooperation, including the transfer of technologies.

In the human rights field, committees or “treaty monitoring bodies” often monitor implementation of treaties. These committees are composed of independent experts of recognized competence in the field of human rights who are elected by States parties.

### III. AMENDMENT, REVISION AND MODIFICATION

Treaty provisions may be altered by agreement of the parties in accordance with the procedure set out in the treaty itself or pursuant to customary international law, as codified by the *Vienna Convention, 1969*. The *Vienna Convention, 1969*, contains the rules governing amendments in articles 39 to 41.

(See also *Summary of Practice*, paragraphs 248 through 255, and *Treaty Handbook*, section 4.4.)

The provisions of a treaty may be altered/modified following the procedure indicated in the treaty in question. The parties may also negotiate a new treaty. “Amendments” have at times been considered legally distinct from “modifications” or “revisions” although the distinction is frequently blurred.

The *Vienna Convention, 1969*, distinguishes between “amendment of multilateral treaties” and “modification between certain parties only”.

The term “revision” often refers (but not always) to a general alteration affecting the treaty as a whole, as opposed to an amendment that partially alters some of the treaty provisions. However, the practice also suggests that the terms “amendment”, “modification” and “revision” have been often used interchangeably. Article 236 *the European Economic Community Treaty, 1957*, provided:<sup>95</sup>

The Government of any Member State or the Commission may submit to the Council proposals for the revision of this Treaty.

If the Council, after consulting the Assembly and, where appropriate, the Commission, expresses an opinion in favour of the calling of a conference of representatives of the Governments of member States, such conference be convened by the President of the council for the purpose of determining in common agreement the amendments to be made to this Treaty.

Such amendments shall enter into force after being ratified by all Member States in accordance with their respective constitutional rules.

The *Treaty on European Union, 1992*, states:

Article N

1. The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

<sup>95</sup> Article 236 was repealed.

2. A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B.<sup>96</sup>

#### A. AMENDMENT

### 1. Amendment in accordance with the provisions of the treaty

a. The text of a treaty may be altered in accordance with its own amendment provisions. Most contemporary treaties include mechanisms for their amendment.<sup>97</sup> The amendment procedure within a treaty usually contains provisions governing the mode of adoption of amendments and its entry into force.<sup>98</sup> Articles 108 and 109 of the *Charter of the United Nations* provide:

#### Amendments

##### Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

##### Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in

accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

b. The amendment provision of the treaty may be very detailed and specify the procedure for the notification of the proposals for amendments, its circulation, its adoption, the manner of obtaining the consent of the parties to be bound by the amendment and the effect of the amendment. Article 12 of the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, provides:

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Normally, the relevant treaty secretariat circulates proposals of amendment.

### Effects of amendments

a. Usually an amendment, upon its entry into force, binds only those States that have formally accepted it. This is a principle ordinarily applicable to the entry into force of amendments. However, it has the negative effect of

<sup>96</sup> The *European Economic Community Treaty, 1957* (as amended), became the *Treaty establishing the European Community* following the amendments to the Community Treaties made by the *Treaty on European Union, 1992* ("Treaty of Maastricht").

<sup>97</sup> Some treaties do not provide for specific amendment procedures. The *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, in article 47 only provides that, "[a]t the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it." In such a case, a conference of the Contracting States will have to establish the procedures for amending the Convention, including its entry into force.

<sup>98</sup> For a detailed discussion of entry into force of amendments, see chapter I, section K.3, above.



creating different regimes under the same treaty. One regime will govern those States that are party to the amendment; another regime will govern those States that are party to the original treaty only. Article 39 (5) of the *United Nations Convention against Transnational Organized Crime, 2000*, reflects this approach:

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Similarly, article 13 (5) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, stipulates that amendments enter into force only for those States that have accepted them. Article 13 (5) also deals with the States that become party after the entry into force of the amendment:

An amendment to this Convention shall enter into force for all States Parties to this Convention, which have accepted it, upon the deposit with the Depository of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

- b.** A treaty may also provide that all States parties to the treaty may, upon the entry into force of the amendment, be bound by such amendment. Amendments binding upon all parties ensure uniformity of the obligations among all parties. This should be a preferred option for amendments to the constitution of treaty bodies. However, it is necessary to be careful with such a provision as some parties may have difficulties due to domestic legal concerns. See for example Article 108 of the *Charter of the United Nations*; and chapter I, section K.3, above entitled “Entry into force of annexes and amendments”.

It is suggested that amendment procedures should avoid complex or unclear rules that may lead to practical difficulties. Unambiguous formulae for amendments that include clear rules governing the proposal of amendments; submission of the amendment proposal for circulation to all parties; adoption procedures (if including a specific proportion of votes, clearly indicating whether this proportion relates to all the parties or all the parties present at the time the vote is taken); circulation of the adopted amendment by the depositary; and entry into force procedures may avoid infinite problems of interpretation and implementation.

An amendment provision with clear procedures is found in the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, article VII:

## Amendments

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to this Treaty, the Protocol, or the Annexes to the Protocol. Any State Party may also propose changes, in accordance with paragraph 7, to the Protocol or the Annexes thereto. Proposals for amendments shall be subject to the procedures in paragraphs 2 to 6. Proposals for changes, in accordance with paragraph 7, shall be subject to the procedures in paragraph 8.
2. The proposed amendment shall be considered and adopted only by an Amendment Conference.
3. Any proposal for an amendment shall be communicated to the Director-General, who shall circulate it to all States Parties and the Depository and seek the views of the States Parties on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Director-General no later than 30 days after its circulation that they support further consideration of the proposal, the Director-General shall convene an Amendment Conference to which all States Parties shall be invited.
4. The Amendment Conference shall be held immediately following a regular session of the Conference unless all States Parties that support the convening of an Amendment Conference request that it be held earlier. In no case shall an Amendment Conference be held less than 60 days after the circulation of the proposed amendment.
5. Amendments shall be adopted by the Amendment Conference by a positive vote of a majority of the States Parties with no State Party casting a negative vote.
6. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.
7. In order to ensure the viability and effectiveness of this Treaty, Parts I and III of the Protocol and Annexes 1 and 2 to the Protocol shall be subject to changes in accordance with paragraph 8, if the proposed changes are related only to matters of an administrative or technical nature. All other provisions of the Protocol and the Annexes thereto shall not be subject to changes in accordance with paragraph 8.
8. Proposed changes referred to in paragraph 7 shall be made in accordance with the following procedures:
  - (a) The text of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The



Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(b) No later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Treaty and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(c) The Executive Council shall examine the proposal in the light of all information available to it, including whether the proposal fulfils the requirements of paragraph 7. No later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(d) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(e) If a recommendation of the Executive Council does not meet with the acceptance required under sub-paragraph (d), a decision on the proposal, including whether it fulfils the requirements of paragraph 7, shall be taken as a matter of substance by the Conference at its next session;

(f) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(g) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

## 2. Amendment where the treaty is silent on amendments

If a treaty does not contain provisions on amendment procedures, the treaty may be amended or modified in accordance with part IV of the *Vienna Convention, 1969*, entitled "Amendment and modification of treaties". Article 39 of the *Vienna Convention, 1969*, states that:

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

The *Vienna Convention, 1969*, makes a distinction between amendment and modification among certain parties only.

Article 40 of the *Vienna Convention, 1969*, stipulates that, unless the treaty otherwise provides, any proposal to amend it for all the parties must be notified to all contracting States. Each contracting State has the right to take part in (a) the decision as to the action to be taken in regard to such proposal and (b) the negotiation and conclusion of any agreement for the amendment of the treaty. Additionally, in accordance with article 24 of the *Vienna Convention, 1969*, as referred to in article 39, an amendment enters into force in such manner and upon such date as it may provide or as the negotiating States may agree. Failing such provision or agreement, it enters into force as soon as the consent to be bound has been established for all the negotiating States.

## 3. Amendment of protocols to a treaty

a. A treaty may contain provisions on amendments to protocols thereto. The *Vienna Convention for the Protection of the Ozone Layer, 1985*, article 9 allows for amendment of the Convention and protocols as follows:

### Amendment of the Convention or Protocols

1. Any Party may propose amendments to this Convention or to any protocol. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at

the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the parties to this Convention or by at least two-thirds of the parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.<sup>99</sup>

**b.** Where parties wish to stipulate a distinct amendment procedure for protocols, protocols may include their own amendment procedures. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000*, article 18 states:

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### **4. Amendment of annexes to a treaty**

A treaty may specify the amendment procedure for its annexes. *The Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, describes in detail the rules governing the proposal, adoption, consent to be bound, entry into force and legal effects of the amendment to its annexes. Article 21 reads:

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the

<sup>99</sup> See also the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* (article 17).

text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Similarly, the *International Convention for the Suppression of the Financing of Terrorism, 1999*, states in article 23 that:

1. The annex may be amended by the addition of relevant treaties that:

- (a) Are open to the participation of all States;
- (b) Have entered into force;
- (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States

Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

When the treaty is silent on amendments to annexes, the general rules governing amendment and modification of treaties apply.

## B. REVISION

Revision (or review) of a treaty basically means amendment of a comprehensive nature. However, if the treaty has not yet entered into force, it is not possible to amend that treaty pursuant to its own amendment provisions. In such a case, States may agree that the text needs to be “revised” subsequent to the treaty’s adoption, but prior to its entry into force. Then, the negotiating parties, including signatories and contracting parties, may meet to adopt additional agreements or protocols to address the problem. Such was the case of the *Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*. Certain difficulties relating to the seabed mining provisions contained in Part XI of the Convention were raised primarily by industrialized States. To address these concerns, which would have created a situation where most industrialized States would not have become party to the Convention, the Secretary-General convened in 1990 a series of informal consultations, which culminated in the adoption, on 28 July 1994, of the 1994 Agreement relating to the implementation of Part XI. The Agreement entered into force on 28 July 1996. Its article 2 deals with the relationship between the Agreement and Part XI of the Convention and it provides that the two shall be interpreted and applied together as a single instrument.

A revision may also take place after the entry into force of the treaty. Part IV of the *Vienna Convention, 1969*, does not mention the term revision nor does it refer to the revision procedure. However, some treaties provide for revision or review separate from amendment. In such cases, the term revision is often used to mean a general change to adapt the treaty to new changed circumstances, as opposed to



an amendment that constitutes a change to specific provisions of a treaty. The *Charter of the United Nations* refers to the revision process in Article 109 (under the heading “Amendments”). Article 109 provides:

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.
3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

#### C. MODIFICATION AMONG CERTAIN PARTIES ONLY

Under treaty law, the term modification normally refers to alterations of certain provisions of a treaty only among certain parties to that treaty. Among other parties, the original provisions apply. In accordance with article 41 of the *Vienna Convention, 1969*, two or more parties to a treaty may conclude an agreement to modify that treaty only among themselves if such a possibility is contemplated in the treaty or is not prohibited by the treaty and the modification does not affect other parties’ rights and obligations under the treaty and is not against the object and purpose of the treaty.

The *United Nations Convention on the Law of the Sea, 1982*, article 311 (3) reads:

Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

Provisions modifying a treaty between certain parties only are normally found in bilateral treaties supplementing certain provisions of multilateral treaties such as the *Convention between Spain and Romania Supplementary to the 1954 Convention Relating to Civil Procedure, 1999*; and the *Agreement between the Government of the Republic of Hungary and the Government of Canada on Air Transport* that supplemented the provisions of the *1944 Convention on International Civil Aviation, 1998*.

#### IV. DURATION

Although not universal, some multilateral treaties contain provisions on duration. Where there is no provision, Part V, sections 1 (articles 42 through 45), and 3 (articles 54 through 64), of the *Vienna Convention, 1969*, set out the circumstances in which a treaty may be denounced, terminated or its operation suspended, other than on grounds of invalidity.<sup>100</sup>

##### A. SUSPENSION

The suspension of the operation of a treaty produces the legal effect of the provisional cessation of the application of its provisions. The treaty still subsists but its application is put on hold. General provisions concerning the suspension of a treaty are contained in Part V, section 1 of the *Vienna Convention, 1969*. Suspension is expressly referred to in article 57.

A treaty may specify the conditions of its suspension. Treaties containing clauses on the suspension of the treaty as a whole are not abundant. Some examples are found in treaties providing for the suspension or derogation of some of their provisions, particularly treaties in the economic field such as those concluded within the framework of the European Community or the World Trade Organization. See for example, article 7 (c) of the *Treaty establishing the European Community, 1957*:

When drawing up its proposals with a view to achieving the objectives set out in Article 8a, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

<sup>100</sup> Part V, section 2 of the *Vienna Convention, 1969*, states the rules on invalidity of treaties.



If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.<sup>101</sup>

In the absence of provisions relating to suspension, under customary international law, the operation of a treaty may be suspended with regard to all the parties or to a particular party at any time by consent of all the parties after consultation with the other contracting States (see article 57 of the *Vienna Convention, 1969*). As a general rule, provided that suspension is not prohibited by the treaty, such a treaty may also be suspended temporarily by agreement between certain parties only, if the suspension does not affect the enjoyment by the other parties of their rights or the performance of their obligations under the treaty and the suspension is not incompatible with the object and purpose of the treaty (see article 58 (1) (b) of the *Vienna Convention, 1969*). A treaty may be implicitly suspended by the conclusion of a later treaty if it appears from the later treaty or is otherwise established that such was the intention of the parties (article 59 (2) of the *Vienna Convention, 1969*).

## **B. WITHDRAWAL/DENUNCIATION**

Generally, a party may withdraw from or denounce a treaty, in conformity with the provisions of the treaty or at any time with the consent of all parties after consultation with all contracting States (see article 54 of the *Vienna Convention, 1969*). The words denunciation and withdrawal express the same legal concept. Denunciation (or withdrawal) is a procedure initiated unilaterally by a State to terminate its legal engagements under a treaty. The treaty in question continues to produce its effects with respect to other parties to the treaty.

General provisions concerning denunciation or withdrawal of a treaty are included in articles 42 through 45 of the *Vienna Convention*. Part V, section 3, of the *Vienna Convention, 1969* contains further provisions relating to the denunciation of or the withdrawal from a treaty.

### **1. Withdrawal (or denunciation) in accordance with the provisions of the treaty**

When a treaty authorizes its denunciation, it often also specifies the conditions under which the denunciation may take place. The *Optional Protocol to the 1989 Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000*, article 15 provides:

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<sup>101</sup> See also the *General Agreement on Tariffs and Trade, 1947* (article XVIII); and the *Agreement on Technical Barriers to Trade (annexed to the Marrakech Agreement establishing the World Trade Organization, 1994)* (article 12.8).

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.<sup>102</sup>

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, also authorizes its denunciation and sets out the conditions to be followed to denounce the Convention. Article 20 provides:

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.<sup>103</sup>

The *Convention on the Rights of the Child, 1989*, also permits denunciation. Article 52 provides:

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

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<sup>102</sup> See also the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, 2000* (article 11).

<sup>103</sup> See also the *United Nations Framework Convention on Climate Change, 1992* (article 25).

Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.<sup>104</sup>

Article 28 of the *Stockholm Convention on Persistent Organic Pollutants, 2001*, for example, provides for the withdrawal from the Convention:

#### Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the depositary.
2. Any such withdrawal shall take effect upon the expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 19 of the *Vienna Convention for the Protection of the Ozone Layer, 1985*, provides for the withdrawal from the Convention and any of its Protocols:

At any time after four years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.

Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Any Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

## 2. **Withdrawal (or denunciation) where the treaty is silent on withdrawal (or denunciation)**

Some treaties do not contain denunciation or withdrawal provisions. For example, some human rights treaties such as the *International Covenant on Civil and Political Rights, 1966*, do not contain denunciation or withdrawal provisions.

The *Vienna Convention, 1969*, upholds the principle that a treaty is subject to denunciation or withdrawal only if the appropriate provisions are incorporated in the treaty. However, the implicit authorization by a treaty constitutes an exception to that principle. Accordingly, in the case of a treaty that is silent on denunciation or withdrawal, a party may withdraw from or denounce a treaty if it is established that the parties intended to admit the possibility of denunciation or withdrawal or if a right of denunciation or withdrawal may be implied by the nature of the treaty. A party must give at least 12 months' notice of its intention to denounce or withdraw from a treaty (see article 56 of the *Vienna Convention, 1969*).<sup>105</sup>

## C. **DENIAL OF RIGHTS/EXCLUSION**

Some treaties contain provisions denying particular rights under the treaties to parties in certain circumstances. Article 61 of the *International Cocoa Agreement, 2001*, provides:

If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude such Member from the Organization. The Council shall immediately notify the depositary of any such exclusion.

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<sup>105</sup> On 25 August 1997, the Secretary-General received from the Government of the Democratic People's Republic of Korea a notification of withdrawal from the *International Covenant on Civil and Political Rights, 1966*, dated 23 August 1997. As the Covenant does not contain a withdrawal provision, the depositary communicated on 23 September 1997 an aide-mémoire to the Government of the Democratic People's Republic of Korea explaining the Secretary-General's position in relation to the above notification. The Secretary-General, as depositary relying on article 56 of the *Vienna Convention, 1969*, concluded that in the case of the Covenant, the negotiating parties did not seem to have overlooked the possibility of explicitly providing for withdrawal or denunciation but rather that it appeared that they had deliberately intended not to provide for it. In relation to the question on whether the nature of the Covenant, as a human rights treaty, implied a right of denunciation or withdrawal, the Secretary-General concluded that, even though some human rights treaties explicitly provide for denunciation, such treaties do not imply an inherent right of denunciation or withdrawal. In particular, since the Covenant was among the relative minority of human rights treaties not explicitly subject to denunciation or withdrawal, it would be incorrect to assume that the Covenant's nature somehow implied the possibility of denunciation or withdrawal. Therefore, consistent with article 54 of the *Vienna Convention, 1969*, a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agreed with such a withdrawal. Accordingly, the Secretary-General circulated the notification of withdrawal and the aide-mémoire to all States Parties under cover of C.N.1997.TREATIES-10 of 12 November 1997. Austria, Canada, Denmark, Finland, France, Germany, Kuwait, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom (and the United Kingdom on behalf of the European Union) wrote to the Secretary-General expressing their views on the denunciation by the Democratic People's Republic of Korea. All except Kuwait clearly stated in their letters to the Secretary-General that they considered that denunciation was not permitted under the Covenant and objected to the withdrawal by the Democratic People's Republic of Korea.

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<sup>104</sup> See also the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966* (article 21), and the *Protocol relating to the Status of Refugees, 1967* (article 9).

Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.<sup>106</sup>

Similarly, the *International Agreement on Olive Oil and Table Olives, 1986*, article 58, states that:

If the Council decides that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by unanimous decision of the other Members, exclude that Member from this Agreement. The Council shall immediately notify the depositary of its decision. The Member in question shall cease to be a Party to this Agreement 30 days after the date of that decision.

Exclusion from a treaty could also result from the non-payment of dues.

#### D. EXTENSION OF THE DURATION

Where a treaty specifies its duration it may also provide for extension of that duration and the conditions for extension. Thus, for example, article 52 (2) of the *International Coffee Agreement, 2000*, provides:

(2) The Council may, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to extend this Agreement beyond 30 September 2007 for one or more successive periods not to exceed six years in total.

Similarly, the *Food Aid Convention, 1999*, under its article XXV, was to remain in force "until 30 June 2002".<sup>107</sup> Article XXV (b) and (c) of the Convention further provides:

(b) The Committee may extend this Convention beyond 30 June 2002 for successive periods not exceeding two years on each occasion, provided that the Grains Trade Convention, 1995, or a new Grains Trade Convention replacing it, remains in force during the period of the extension.

(c) If this Convention is extended under paragraph (b) of this Article, the commitments of members under paragraph (e) of Article III may be subject to review by members before the entry into force of each

extension. Their respective commitments, as reviewed, shall remain unchanged for the duration of each extension.

Likewise, the *International Natural Rubber Agreement, 1987*, was to remain in force "for a period of five years after its entry into force" unless extended as permitted under article 66:

3. The Council may, by special vote, extend this Agreement by a period or periods not exceeding two years in all, commencing from the date of expiry of the five-year period specified in paragraph 1 of this article.

#### V. TERMINATION

Based upon the general principle of international law *pacta sunt servanda*, a treaty in force is binding upon the parties and must be performed by them in good faith.<sup>108</sup> However, a treaty may be ended by agreement of the parties in accordance with the procedure sets out in the treaty itself or pursuant to customary international law, as codified by the *Vienna Convention, 1969*. General provisions governing termination are specified in the *Vienna Convention, 1969*, articles 42 to 45. General rules on termination of the operation of treaties are included in section 3 of the *Vienna Convention, 1969*.

Unlike amendments, which have the effect of altering the provisions of the treaty, termination releases the parties from any obligation to comply further with the treaty provisions; the treaty ceases to be in force (unless the provisions concerned are also part of customary international law).

Article 42 (2) of the *Vienna Convention, 1969*, states that a treaty may only be terminated as a result of the application of the provisions of the treaty itself or of the *Vienna Convention, 1969*. A subsequent treaty to which all the parties of the former treaty are also party may also terminate a treaty.

#### 1. Termination in accordance with the provisions of the treaty

a. Although most treaties are concluded for an indefinite period of time, a treaty may specify the rules governing its termination and the administrative consequences and implications of such termination.

A treaty may be terminated upon the decision of an organ established under the treaty. For example, under article 63 (4) and (5) of the *International Cocoa Agreement, 2001*, the treaty may be terminated:

<sup>108</sup> See article 26 of the *Vienna Convention, 1969*.

<sup>106</sup> See also the *Agreement Establishing the International Tea Promotion Association, 1977* (article 24); the *International Natural Rubber Agreement, 1987* (article 64); and the *International Coffee Agreement, 2000* (article 50).

<sup>107</sup> The *Food Aid Convention, 1999*, was extended pursuant to these provisions: In June 2002 it was decided to extend the Convention until 30 June 2003 and in June 2003 it was decided to extend the Convention until 30 June 2005. See also the *International Agreement on Olive Oil and Table Olives, 1986* (article 60).



[...]

4. The Council may at any time, by special vote, decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 26 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the depositary of any such decision.

5. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.

[...]

Also the *International Coffee Agreement, 2000*, article 52 (3) and (4):

The Council may at any time, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to terminate this Agreement. Termination shall take effect on such date as the Council shall decide.

Notwithstanding the termination of this Agreement, the Council shall remain in being for as long as necessary to take such decisions as are needed during the period of time required for the liquidation of the Organization, settlement of its accounts and disposal of its assets.

Moreover, the *International Natural Rubber Agreement, 1979*, in article 67 (6) states:

The Council may at any time, by special vote, decide to terminate this Agreement with effect from such date as it may determine. The Council shall notify the depositary of any such decision.

**b.** The treaty may also specify a set date for its termination. For example the *International Agreement on Olive Oil and Table Olives, 1986*, article 60 (1) reads as follows:

This Agreement shall remain in force until 31 December 1991 unless the Council decides to prolong it, extend it, renew it or

terminate it in advance in accordance with the provisions of this article.

**c.** The treaty may indicate as well that the later treaty is terminating an earlier treaty or a number of them. Thus, the *Single Convention on Narcotic Drugs, 1954*, provides for the termination of certain earlier treaties in the narcotics field as between parties to the *Single Convention*. Its article 44 reads as follows:

Termination of Previous International Treaties

1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:

- (a) International Opium Convention, signed at The Hague on 23 January 1912;
- (b) Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925;
- (c) International Opium Convention, signed at Geneva on 19 February 1925;
- (d) Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931;
- (e) Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931;
- (f) Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, except as it affects the last-named Convention;
- (g) The Conventions and the Agreements referred to in subparagraphs (a) to (e) as amended by the Protocol of 1946 referred to in subparagraph (f);
- (h) Protocol signed at Paris on 19 November 1948 Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success on 11 December 1946;
- (i) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and



Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should that Protocol have come into force.

2. Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, shall, between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2(b) of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

## 2. Termination where the treaty is silent on termination

The *Vienna Convention, 1969*, sets out general principles regarding termination in case the treaty does not contain any provision on termination. Articles 54 and 55 provide that the termination of a treaty may take place at any time following consultation by consent of all the parties. Unless the treaty otherwise provides, a multilateral treaty does not terminate by the reason only that the number of parties falls below the number necessary for its entry into force. However, exceptionally, a treaty may terminate for this reason. See the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*. Article XV provides that:

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date in which the last of these denunciations shall become effective.

Many treaties do not include in their final clauses provisions on termination. This is often the case with human rights and environmental treaties.

## CONCLUSIONS

Final clauses are often perceived as merely formal provisions. However, they include articles on a vast variety of matters, some of which, such as entry into force, amendment or settlement of disputes are of extreme importance for the operation of a treaty. Final clauses including articles on signature, ratification, acceptance, approval, accession, reservations, entry into force, settlement of disputes, amendment, annexes, withdrawal/denunciation or the designation of the depositary are set forth in most multilateral treaties. Specific provisions on these matters contribute to assisting with the effective implementation of a multilateral treaty. In contrast, final clauses relating to provisional application, territorial application, relationship to other treaties, or duration, are not always needed. Their inclusion in a particular treaty depends on the nature and content of that treaty.

Although final clauses tend to follow existing precedents, drafting should take into consideration the particular needs of a treaty. Given the essential role they play, final clauses should also be drafted to overcome recurring problems, particularly the most troublesome such as participation in treaties or entry into force of amendments. In this context ST/SGB/2002/7 is considered particularly important from the perspective of the Secretary-General.



28 August 2001

## Secretary-General's bulletin

### Procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements

The Secretary-General, for the purpose of establishing procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements, promulgates the following:

#### Part I Treaties and international agreements concluded by the United Nations

##### Section 1

###### Drafts of treaties and international agreements

Drafts of treaties and international agreements to be concluded by the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

##### Section 2

###### Registration or filing and recording

All treaties and international agreements concluded by the United Nations shall be forwarded by the relevant department, office or regional commission to the Treaty Section of the Office of Legal Affairs (Treaty Section), upon their entry into force, for registration pursuant to Article 102 of the Charter of the United Nations, or filing and recording. Such instruments shall remain in the custody of the Treaty Section unless special arrangements have been approved in advance by the Treaty Section.

#### Part II Instruments relating to treaty actions by the United Nations

##### Section 3 Instruments requiring consultations

Where the United Nations intends to undertake a treaty action for which purpose full powers, an act of formal confirmation or an instrument of acceptance, approval or accession are required, the relevant department, office or regional commission shall consult with the Office of Legal Affairs in advance of such action.

##### Part III

#### Treaties and international agreements to be deposited with the Secretary-General

##### Section 4

###### Drafts of treaties and international agreements

4.1 All draft treaties and international agreements intended to be deposited with the Secretary-General of the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

4.2 Draft final clauses of such treaties and international agreements shall be submitted by the relevant department, office or regional commission to the Treaty Section for review and comment prior to finalization.

4.3 Every endeavour shall be made to ensure that the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations are concluded only in the official languages of the United Nations.

##### Section 5 Adopted texts of treaties and international agreements

5.1 Following the formal adoption of the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations, the adopted texts shall be submitted by the relevant department, office or regional commission, in both paper and electronic formats, to the Treaty Section, in all the authentic languages, for purposes of preparing the originals of such agreements, and for performing the requisite depositary functions. In general, a period of four weeks should be allowed between the dates of adoption and the dates on which the treaties or international agreements are opened for signature to enable the preparation of the originals of the treaties or international agreements and the distribution of the certified true copies.

5.2 Following the formal adoption of such texts, no further changes shall be made to the texts by any department, office or regional commission, except in consultation with the Treaty Section.

##### Section 6

#### Designation of the Secretary-General as depositary of treaties and international agreements

6.1 When it is intended that the Secretary-General discharge the depositary functions relating to treaties and international agreements, such treaties or international agreements shall confer the depositary functions on the Secretary-General only and not on any other official of the United Nations. The Secretary-General shall not be designated as a co-depositary.

6.2 When it is intended that the Secretary-General be designated the depositary, the relevant department, office or regional commission shall consult the Treaty Section in advance.

6.3 All treaties and international agreements deposited with the Secretary-General and open for signature shall remain in the custody of the Treaty Section. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

##### Section 7 Full powers

All instruments of full powers received by any department, office or regional commission authorizing representatives to sign treaties and international agreements deposited with the Secretary-General shall be forwarded to the Treaty Section for verification prior to signature of such treaties and international agreements. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

##### Section 8 Ceremony of signature

When it is arranged for States to sign a treaty or international agreement deposited with the Secretary-General on the same occasion, the Office of Legal Affairs shall be informed in advance by the relevant department, office or regional commission. Arrangements for the ceremony at which the signatures are to be affixed, including provision for the discharge of the depositary functions, shall be made in consultation with the Treaty Section.

##### Section 9

#### Instruments and notifications to be deposited with the Secretary-General

Instruments of ratification, acceptance, approval, accession, succession or any similar instruments and notifications relating to treaties and international agreements deposited with the Secretary-General which are received by any department, office or regional commission shall be forwarded to the Treaty Section.

#### Part IV Final provisions

##### Section 10

###### Final provisions

10.1 The present bulletin shall enter into force on 1 October 2001.

10.2 Administrative instruction AI/52 of 25 June 1948 is hereby abolished.

(Signed) Kofi A. Annan  
Secretary-General



## **GLOSSARY**

### **Acceptance**

See ratification.

### **Accession**

Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession". Accession has the same legal effect as ratification, acceptance or approval.

### **Adoption**

Adoption is the formal act by which negotiating parties establish the form and content of a treaty. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.

### **Amendment**

Amendment, in the context of treaty law, means the formal alteration of the provisions of a treaty by its parties.

### **Approval**

See ratification.

### **Authentication**

Authentication is the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, its provisions cannot be modified except by formal amendment.

### **Authentic language**

A treaty typically specifies its authentic languages - the languages in which the meaning of its provisions is to be determined.

### **Authentic text**

The authentic text of a treaty is the version of the treaty that has been authenticated by the parties.

### **Bilateral treaty**

See treaty.

### **Consent to be bound**

A State expresses its consent to be bound by a treaty under international law by some formal act, i.e., definitive signature, ratification, acceptance, approval or accession.

### **Contracting State**

A contracting State is a State that has expressed its consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for that State.

### **Convention**

The term "convention" is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are referred to as conventions. The same holds true for instruments adopted by an organ of an international organization.

## **Declaration**

### **interpretative declaration**

An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.

### **mandatory declaration**

A mandatory declaration is a declaration specifically required by the treaty itself. Unlike an interpretative declaration, a mandatory declaration is binding on the State making it.

### **optional declaration**

An optional declaration is a declaration that a treaty specifically provides for, but does not require. Unlike an interpretative declaration, an optional declaration is binding on the State making it.

## **Depositary**

The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969. A depositary can be one or more States, an international organization, or the chief administrative officer of the organization, such as the Secretary-General of the United Nations.

## **Depositary notification**

A depositary notification (sometimes referred to as a C.N. - an abbreviation for circular notification) is a formal notice that the Secretary-General sends to all Member States, non-member States, the specialized agencies of the United Nations, and the relevant secretariats, organizations and United Nations offices, as depositary of a particular treaty. The notification provides information on that treaty, including actions undertaken.

## **Entry into force**

Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force.

## **Final Act**

A Final Act is a document summarising the proceedings of a diplomatic conference. It is normally the formal act by which the negotiating parties bring the conference to a conclusion. It is usually part of the documentation arising from the conference, including the treaty, the resolutions and

interpretative declarations made by participating States. There is no obligation to sign the Final Act, but signature may permit participation in subsequent mechanisms arising from the conference, such as preparatory committees. Signing the Final Act does not normally create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.

### **Final clauses**

Final clauses are provisions typically found at the end of a treaty, dealing with such topics as signature, ratification, acceptance, approval, accession, denunciation, amendment, reservation, entry into force, settlement of disputes, depositary matters and authentic texts.

### **Full powers**

Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given treaty actions.

### **Interpretative declaration**

See declaration.

### **Mandatory declaration**

See declaration.

### **Modification**

Modification, in the context of treaty law, refers to the variation of certain provisions of a treaty only as between particular parties to that treaty. As between other parties, the original provisions apply.

### **Multilateral treaty**

See treaty.

### **Optional declaration**

See declaration.

### **Party**

A party to a treaty is a State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law.

### **Protocol**

A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times States have

negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.

### **Ratification, acceptance, approval**

Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty.

### **Registration**

Registration, in the context of treaty law and practice, refers to the function of the Secretariat of the United Nations in effecting the registration of treaties and international agreements under Article 102 of the *Charter of the United Nations*.

### **Reservation**

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations.

### **Revision**

Revision basically means amendment. However, some treaties provide for revisions separately from amendments. In that case, revision typically refers to an overriding adaptation of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.

### **Signature**

#### **definitive signature (signature not subject to ratification)**

Definitive signature occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval.

#### **simple signature (signature subject to ratification)**

Simple signature applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves the treaty.

### **Treaty**

Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons. Thus, treaties may be concluded between:

- a. States;
- b. International organizations with treaty-making capacity and States; or



c. International organizations with treaty-making capacity.

The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law.

The Vienna Convention 1969 defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" (article 2(1)(a)). Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements.

No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity.

See article 2(1)(a) of the Vienna Convention 1969. See generally Vienna Convention 1969 and Vienna Convention 1986.