

Document:-  
**A/CN.4/L.108**

**Addition to article 29 or new article 29 bis, proposed by Mr. S. Rosenne**

Topic:  
**Law of Treaties**

Extract from the Yearbook of the International Law Commission:-  
**1965, vol. II**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

## DOCUMENT A/CN.4/L.108

Addition to article 29 or new article 29 *bis*, proposed by Mr. S. Rosenne

[Original text: English]  
[13 May 1965]

Unless otherwise provided in the treaty or these articles, any notice communicated by the depositary to the States mentioned in article 29, paragraph 1, becomes operative 90 days after the receipt by the depositary of the instrument to which the communication relates.

*Commentary*

(1) Certain provisions of these articles require notice to be transmitted through the depositary, notably articles 15 (2), 18 (3), 19 (2) [Special Rapporteur's Fourth Report, A/CN.4/177, Add.1, article 20 (1), 20 (3), 20 (5)], 22 (1) [Special Rapporteur's Fourth Report, article 20 (b)], 27, 29, 40 (1) (b), and 50; and other provisions, notably article 66, provide in more general terms for the giving of notices to the parties, without always specifying whether, in cases of multilateral treaties, the notices are to be transmitted through the depositary. The depositary himself functions "on behalf of" all the parties to the treaty and the States to which it is open to become a party, and clearly it is right to rely on the exercise of the depositary functions with all due diligence, whatever form of language is used to express that idea.

(2) The draft articles adopted in 1962 deal with the functions of the depositary from the point of view of the administration of the treaty. However, the exercise of those functions produces legal consequences in terms of the legal rights and duties of States, and in order to ensure that effect will be given to these legal consequences it becomes necessary to establish when the act to which the instrument refers becomes operative, i.e. the time from which those rights and obligations will come into existence. This issue is raised directly by the United Kingdom Government in the limited context of the effect of the withdrawal of a reservation in its comment on article 22 (A/CN.4/175), and the same thought seems to be behind the comment of the Israel Government on articles 15 and 29, when it refers to "receipt of those notifications through the normal channels by the home authorities of the individual State" (*ibid.*).

(3) It could well be imagined that this moment would be the very time on which that act is communicated to the

depositary. This was indeed the view of the International Court of Justice in the *Right of Passage* case,<sup>1</sup> with reference to the special circumstances of the time with effect from which a declaration accepting the compulsory jurisdiction of that Court under its Statute enters into effect; and the same would probably be the position as regards other existing multilateral conventions which are silent on the matter. This view of the law was recognized by the Commission in 1962 in article 15, paragraph 2 (b); at the same time the Commission, by referring to the possible "small time-lag before the other States become aware that the treaty is in force between them and the State depositing the instrument", may have realized the possible practical inconvenience of the rule.<sup>2</sup>

(4) The present proposal therefore aims to cover that time-lag by allowing for a short period before the instrument deposited with the depositary becomes operative in the sense of establishing the time from which the legal position of the other States concerned is affected. It is suggested that this period should be fixed at 90 days, thus allowing both for the observance of the normal administrative practices of the depositary and for receipt of the notice by the home authorities of the States concerned and the observance of their normal administrative practices. It also allows for different depositary practices: sometimes the notices are transmitted through a government's own diplomatic posts abroad, sometimes through diplomatic posts accredited to the depositary; and sometimes by mail. The term "becomes operative" appears in article 15 (2) and in the Special Rapporteur's new proposal for article 22.

*Note to the above*

As an illustration: On 16 April 1965, there was received in the Israel Ministry of Foreign Affairs a communication from a depositary, dated 6 April 1965, relating to an action concerning a multilateral treaty and received by the depositary on 10 March 1965.

<sup>1</sup> *Case concerning Right of Passage over Indian Territory (Preliminary objections)*, I.C.J. Reports, 1957, p. 125.

<sup>2</sup> *Yearbook of the International Law Commission*, 1962, vol. II, document A/5209, commentary on article 15, para. 4.