

ARTICLE 102

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TEXT OF ARTICLE 102

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

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

INTRODUCTORY NOTE

1. The principle of obligatory registration and publication of treaties, first introduced in international law and practice under the Covenant of the League of Nations, has been adopted by the United Nations in Article 102 (1), which imposes the obligation on Member States to register treaties and international agreements entered into after the coming into force of the Charter. The Secretariat is designated as the organ with which such registration is to be effected and it is charged with the duty of publishing all treaties and international agreements so registered. Article 102 (2) provides for a sanction to be imposed for failure to discharge the obligation under Article 102 (1).

2. At its first five sessions, the General Assembly considered various points in connexion with the implementation of Article 102, and, as a result, it took a number of decisions bearing on the interpretation of the provisions of that Article. In addition, recognizing the importance of orderly registration and publication of treaties and international agreements and the maintenance of precise records, the General Assembly laid down 1/ detailed regulations to give effect to Article 102.

3. A list of the decisions taken by the General Assembly in regard to the implementation of Article 102 is contained in the General Survey, which also gives a brief general description of the system of registration. In view of the fact that certain articles of the regulations throw light on substantive questions arising under the provisions of Article 102, it has been found useful to reproduce the text of the regulations in the annex to the General Survey. The articles in question are provided with cross-references to the relevant paragraphs in the Analytical Summary of Practice. Notes are provided which contain references to other articles of the regulations dealing with procedural matters.

4. More detailed discussion of the questions which have arisen in the course of application of Article 102 will be found in the Analytical Summary. The material dealt with therein has been grouped into three sections. The first section deals with the registration of treaties and international agreements. The second section relates to treaties and international agreements which are not subject to registration, but

1/ G A resolution 97 (I).

with regard to which special arrangements for filing and publication have been made by the General Assembly in the regulations. The third section is devoted to questions pertaining to the publication of treaties and international agreements registered or filed.

5. Under the provisions of Article 102 and of the regulations, various functions in the operation of the system of registration and publication of treaties have been assigned to the Secretariat. As a result, a considerable body of practice has developed through the action of that organ. Therefore, in addition to the practice of the General Assembly, this study also reflects the practice of the Secretariat.

6. During the discussions in the General Assembly on the registration of treaties, reference has frequently been made to the sanction provided in Article 102 (2). Inasmuch as such instances bear upon the questions which have arisen in connexion with Article 102 (1), they are discussed in the relevant sections of the Analytical Summary. Otherwise, Article 102 (2) is not dealt with separately in the Analytical Summary as no practice has developed in respect of its application.

I. GENERAL SURVEY

7. The first steps towards implementing Article 102 were taken by the Executive Committee of the United Nations Preparatory Commission under a resolution ^{2/} adopted on 6 October 1945. Under the terms of the resolution, the Executive Secretary was directed to send a circular letter to the Member States, informing them that, as from the date of entry into force of the Charter, treaties and international agreements which Member States transmitted would be received and filed on a provisional basis until the adoption of detailed regulations. ^{3/} In addition, the Executive Committee recommended that the Preparatory Commission invite the General Assembly to consider: (a) inviting non-members voluntarily to send treaties and international agreements for registration with and publication by the Secretariat of the United Nations, and (b) inviting all Governments, whether or not Members of the United Nations, voluntarily to send for publication by the Secretariat treaties and international agreements concluded in recent years but before the date of entry into force of the Charter which had not been included in the Treaty Series of the League of Nations. The recommendation was submitted ^{4/} by the Preparatory Commission to the General Assembly at the first part of its first session.

8. Acting on the above-mentioned recommendation, the General Assembly adopted a resolution ^{5/} by which it instructed the Secretary-General: (a) to invite the Governments of Members of the United Nations to transmit to the Secretary-General for filing and publication treaties and international agreements entered into before the date of entry into force of the Charter and to transmit for registration and publication those entered into after the date of entry into force of the Charter; (b) to receive, from the Governments of non-member States, treaties and international

^{2/} Report by the Executive Committee to the Preparatory Commission of the United Nations, PC/EX/113/Rev.1, 12 Nov. 1945, Chap. V, p. 68.

^{3/} In response to a letter which, pursuant to that resolution, had been circulated to Member States on 8 November 1945, a number of agreements were transmitted to the Secretariat and placed on file accordingly.

^{4/} Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, Chap. VI, p. 59.

^{5/} G A resolution 23 (I).

agreements entered into both before and after the date of entry into force of the Charter which they might voluntarily transmit for filing and publication, excluding, however, those treaties and international agreements which had been published in the Treaty Series of the League of Nations. By the same resolution, the General Assembly instructed the Secretary-General to submit to it proposals for detailed regulations and other measures designed to give effect to the provisions of Article 102.

9. In pursuance of the above-mentioned resolution, the Secretary-General submitted 6/ draft regulations to the General Assembly at the second part of its first session. These draft regulations were referred by the Sixth Committee to Sub-Committee 1 7/ for study and report. Sub-Committee 1 devoted nine meetings, held between 28 November and 9 December 1946, to this task. 8/

10. The report of Sub-Committee 1 9/ containing the regulations it proposed was presented to and approved 10/ by the Sixth Committee. Upon the recommendation of the Sixth Committee, submitted in its report 11/ to the General Assembly on the registration and publication of treaties and international agreements, the General Assembly, under a draft resolution which became resolution 97 (I), adopted 12/ the draft regulations.

11. At its second session, the General Assembly drew 13/ the attention of Member States to the obligations imposed by Article 102.

12. At its third session, the General Assembly requested 14/ that each of the Member States take cognizance of its obligation under Article 102 and take immediate steps to fulfil that obligation; it further instructed the Secretary-General to take all necessary steps to ensure that registered treaties or agreements were published with the least possible delay and that their translations reached the highest possible level of accuracy and precision.

13. At its fourth session, the General Assembly amended 15/ article 4 of the regulations and again requested 16/ the Secretary-General to bring about the earliest possible publication of all registered treaties and agreements.

14. At its fifth session, the General Assembly adopted a resolution 17/ under which it took the action set forth below. (1) It amended articles 7 and 8 of the regulations. (2) It invited Member and non-member States parties to treaties or international agreements subject to publication under article 12 of the regulations

6/ G A (I/2), 6th Com., p. 189, annex 8 (A/C.6/56).

7/ See G A (I/2), 6th Com., 15th mtg., p. 68. Sub-Committee 1 was originally established as Sub-Committee A, and was subsequently referred to as Sub-Committee 1.

8/ For the memorandum summarizing the discussions in the Sub-Committee, see G A (I/2), 6th Com., p. 195, annex 8 a (A/C.6/124).

9/ G A (I/2), 6th Com., p. 200, annex 8 b (A/C.6/125).

10/ G A (I/2), 6th Com., 33rd mtg., p. 176.

11/ G A (I/2), Plen., p. 1586, annex 91 (A/266).

12/ G A (I/2), Plen., 65th mtg.

13/ G A resolution 172 (II).

14/ G A resolution 254 (III).

15/ G A resolution 364 B (IV).

16/ G A resolution 364 A (IV).

17/ G A resolution 482 (V).

to provide the Secretary-General, where feasible, with translations in English or French or both as might be needed for the purposes of such publication. (3) It requested the Secretary-General to publish all treaties and international agreements in their full and unabridged form, including all annexes. (4) It also requested the Secretary-General to review regularly the free mailing list of the United Nations Treaty Series with a view to its possible reduction.

15. In accordance with Article 102, treaties and international agreements must be registered with, and published by, the Secretariat. The General Assembly has also charged the Secretariat with the responsibility for receiving and publishing treaties and international agreements which, under the terms of resolution 97 (I), may be filed and recorded. The various functions of the Secretariat in that connexion have been defined in the regulations. Treaties and international agreements received for the purpose of registration, or filing and recording, are first examined by the Secretariat in order to determine whether they fall within the categories of agreements requiring registration or are susceptible of filing and recording. On several occasions the Secretariat has declined to take action when, in its opinion, an agreement did not fall within any of the above-mentioned categories. ^{18/} The Secretariat is also responsible for ascertaining whether the material transmitted meets all the requirements of the regulations. ^{19/} Agreements subject to registration are then inscribed in the Register and those transmitted for filing and recording are entered in a separate record established for that purpose. Certificates of registration are issued to the registering party or specialized agency and, upon request, to any party to the treaty or international agreement registered. A statement is published every month listing the treaties and international agreements registered, or filed and recorded, during the preceding month. Finally, the texts of all treaties and international agreements which have been registered, or filed and recorded, are published in the United Nations Treaty Series.

16. While a certain number of agreements were received and filed on a provisional basis by the Secretariat during the interval between the two parts of the first session of the General Assembly, effective registration and filing and recording did not start until 14 December 1946, when the General Assembly, by resolution 97 (I), adopted the regulations to give effect to Article 102. The following table shows the number of agreements registered, or filed and recorded, up to 31 December 1954:

<u>Submitting party</u>	<u>Number of agreements</u>		
	<u>Registered</u>	<u>Filed and recorded</u>	<u>Total</u>
Member States	2,732	452	3,184
Non-member States	6	-	6
Specialized Agencies	571	40	611
<u>Ex officio registration</u>	271	64	335
Inter-governmental Organizations	3	-	3
Total	<u>3,583</u>	<u>556</u>	<u>4,139</u>

^{18/} See paras. 29-31 below.

^{19/} See Note to article 5 of the regulations reproduced in the annex to the present General Survey.

17. As soon as sufficient material had accumulated, the Secretariat began the publication of the United Nations Treaty Series, the first volume being issued in October 1947. As of 31 December 1954, 109 volumes of the Treaty Series and four volumes of the General Index to the Treaty Series had been published.

ANNEX

Registration and Publication of Treaties and International Agreements: Regulations to give effect to Article 102 of the Charter of the of the United Nations [20/]

Part One

Registration

Article 1

1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.
2. Registration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto. [21/]
3. Such registration may be effected by any party [22/] or in accordance with article 4 of these regulations. [23/]
4. The Secretariat shall record the treaties and international agreements so registered in a Register established for that purpose. [24/]

Article 2

1. When a treaty or international agreement has been registered with the Secretariat, a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat.
2. The Secretariat shall record the certified statement so registered in the Register established under article 1 of these regulations.

Note

(a) In drafting the regulations it appeared obvious to Sub-Committee 1 (see paragraph 9 above) that the Register would not be complete unless subsequent actions effecting a change in the parties to, or the terms, scope or application of, a treaty or agreement registered, such as additional ratifications, accessions, prolongations,

20/ G A resolution 97 (I), as amended by G A resolutions 364 B (IV) and 482 (V).

21/ See paras. 32-34 below.

22/ See paras. 67-70 below.

23/ See paras. 45-57 below.

24/ See Note to article 8 of the regulations reproduced in the annex to the General Survey.

extensions to territories, denunciations et cetera, were also registered. It was thought that the registration of certified statements of such changes would normally be carried out by the party responsible for the subsequent action, but that any other party, when in a position to do so, would be free to take the initiative. Moreover, in the case of a multilateral agreement, it would be only logical for the Government performing the depositary functions to effect registration of such certified statements.

(b) While not expressly provided for in the regulations, it has been the understanding of the Secretariat that registration of subsequent actions regarding an agreement registered ex officio by the United Nations should similarly be registered ex officio and that subsequent actions relating to an agreement registered by a specialized agency under article 4 (2) of the regulations might be registered by that specialized agency.

(c) Both at the second and third sessions of the General Assembly, the report of the Sixth Committee ^{25/} on the registration and publication of treaties and international agreements noted, as regards the registration of subsequent actions, that whereas a simple statement would be sufficient when there was a change in the parties to a registered treaty, nevertheless, when the scope or application of the agreement was modified, the actual instrument, for example, the exchange of notes or additional protocol et cetera, which had brought about the modification in question, would have to be registered.

(d) It follows naturally, from the provisions of article 2, that no certified statement can be registered unless the agreement to which it relates has already been registered. The Secretariat has declined to take action on the few occasions when the registration of a certified statement relating to an agreement not registered was sought.

(e) In accordance with article 2 (2), the certified statements are inscribed in the same Register which has been established for the registration of treaties and international agreements. To preserve the continuity of registration they are inscribed under the same number as the agreements to which they relate.

(f) It should be noted that the Secretariat has continued to record in the League of Nations Register the additional ratifications, accessions, denunciations et cetera, relating to conventions and agreements in respect of which the Secretary-General of the League of Nations had previously performed the depositary functions and has also undertaken to register in the League of Nations Register, at the request of the parties concerned, such subsequent actions relating to other agreements registered with the League of Nations.

Article 3

1. Registration by a party, in accordance with article 1 of these regulations, relieves all other parties of the obligation to register.

2. Registration effected in accordance with article 4 of these regulations relieves all parties of the obligation to register. [^{26/}]

^{25/} G A (II), Plen., vol. II, p. 1564, annex 19 (A/457); G A (III/1), Plen., Annexes, p. 300, A/698.

^{26/} See paras. 62-66 below.

Article 4

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

- (a) Where the United Nations is a party to the treaty or agreement;
- (b) Where the United Nations has been authorized by the treaty or agreement to effect registration;
- (c) Where the United Nations is the depositary of a multilateral treaty or agreement. [27/]

2. A treaty or international agreement subject to article 1 of these regulations may be registered with the Secretariat by a specialized agency in the following cases:

- (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. [28/]

Article 5

1. A party or specialized agency, registering a treaty or international agreement under article 1 or 4 of these regulations, shall certify that the text is a true and complete copy thereof and includes all reservations made by parties thereto.

2. The certified copy shall reproduce the text in all the languages in which the treaty or agreement was concluded and shall be accompanied by two additional copies and by a statement setting forth, in respect of each party:

- (a) The date on which the treaty or agreement has come into force;
- (b) The method whereby it has come into force (for example: by signature, by ratification or acceptance, by accession, et cetera).

Note

(a) This article specifies the documentation which a party or specialized agency is required to provide when registering a treaty or international agreement. It is the understanding of the Secretariat that, for the registration to become effective, all the documentation enumerated in the article must be in the possession of the Secretariat. When the material transmitted is not in conformity with the requirement of article 5 of the regulations, the Secretariat requests the registering party or

27/ See paras. 45-54 below.

28/ See paras. 55-57 below.

agency to provide the missing documentation and does not proceed with the registration until such documentation is received.

(b) Inasmuch as the regulations require that the text submitted must be a true and complete copy of the agreement, special attention is paid by the Secretariat as to whether all enclosures such as protocols, exchanges of notes, annexes et cetera, mentioned in the text of the agreement as forming a part thereof, are reproduced in the copies transmitted for registration. The omission of any of such enclosures is brought to the attention of the registering party and the action on the agreement is deferred until the material is complete. On a few occasions, owing to the fact that the agreement was concluded in other than working languages, the omission was not discovered until the translations were established and the agreement was ready for publication in the Treaty Series. Nevertheless, requests for missing enclosures were addressed to the registering parties, although in some cases in which the missing documentation was not provided, the agreement had to be published in the Treaty Series without the relevant enclosures.

(c) On the other hand, the Secretariat has declined to register as annexes to an agreement certain instruments entered into prior to the conclusion of the agreement in question if nothing in the terms thereof purported to show the intention of the contracting parties to include those instruments as annexes to the agreement, and if their reproduction in the printed copy of the agreement submitted for registration seemed to be incidental only in that the terms of those instruments had been modified by the agreement in question and the description of those instruments as annexes seemed to be used in the said publication for editorial purposes only. It has been considered that those instruments in themselves constituted agreements which were subject to separate registration and in respect of which all documentation required by article 5 of the regulations should be submitted.

(d) Another example involving a request on the part of the Secretariat for complete documentation has occurred in cases of registration of an agreement between two or more parties, on the one hand, and a third party, on the other hand, concluded by separate exchanges of notes in similar terms between each of the parties concerned and the third party. The registering party had submitted copies of an exchange of notes between itself and the third party and had only advised the Secretariat that similar notes had been exchanged between the other parties to the agreement. Since, pursuant to the provisions of the notes, the whole set of exchanges of notes was to constitute the agreement, the Secretariat felt obliged to request the transmission of the copies of the exchanges of notes which had taken place between the remaining parties.

(e) It may be noted in this connexion that, on the few occasions when a Government registering an agreement, not having been in possession of certain documents required to effect registration, has asked the Secretariat to solicit these documents from the other party, the Secretariat has declined to take action and has pointed out that, under the existing regulations, it was not in a position to address a request directly to a Government in a matter regarding which the authority for initiating action lay with that Government.

(f) At the second session of the General Assembly, in the course of the discussion 29/ in the Sixth Committee of the report 30/ of the Secretary-General on the registration

29/ G A (II), 6th Com., 54th mtg., p. 112.

30/ Ibid., p. 343, annex 12 (A/380).

and publication of treaties, stress was laid upon the significance of the requirement that the registering party should certify that the text of the agreement transmitted for registration included all reservations made by the parties thereto. It was pointed out that this particular requirement meant that the whole agreement had to be registered. Very often, a treaty was accompanied by a protocol or some other interpretative instrument, and exchanges of letters which might contain reservations or qualifications pertaining to the subject-matter. The meaning of article 5 of the regulations was that all such instruments must be registered as a whole in order that the registered material should contain the complete substance of the international obligation thus entered into. It was not permissible simply to register a treaty and to withhold any confidential exchange of letters which might, in fact, modify its substance.

(g) Although not specifically provided for in the regulations, it is the understanding of the Secretariat, based on the discussion of article 5 in Sub-Committee 1 (see paragraph 9 above), that, wherever applicable, the same documentation is required from a party or agency registering a statement under article 2 of the regulations. Thus, a certified statement which relates to subsequent ratification either should indicate that no reservations were attached to the instrument of ratification or, in case of reservations being attached, should spell out their text in the original language in which they were made.

Article 6

The date of receipt by the Secretariat of the United Nations of the treaty or international agreement registered shall be deemed to be the date of registration, provided that the date of registration of a treaty or agreement registered ex officio by the United Nations shall be the date on which the treaty or agreement first came into force between two or more of the parties thereto.

Note

(a) In accordance with the principle of article 1 of the regulations, namely, that registration is effected by a party and not by any action of the Secretariat, article 6 provides that the date of receipt by the Secretariat of the treaty or international agreement shall be deemed to be the date of registration. Because of the administrative processing, a certain period of time naturally elapses between the receipt of a treaty and its inscription in the Register. Thus, the registration is considered as having been effected even before the treaty is actually inscribed in the Register. When this provision was drafted, it was the view of Sub-Committee 1 that delays within the Secretariat should not have the effect of delaying registration. 31/

31/ In one instance, by inadvertence, an agreement was not inscribed in the Register until several months after its receipt. The date of receipt, however, was indicated as the date of registration and the following footnote was provided when the agreement was published among the agreements registered in February 1950: "This Agreement was received by the Secretariat on 22 September 1949, but, owing to an error in distribution, it was not registered under the number corresponding to that date. However, in accordance with article 6 of the regulations to give effect to Article 102 of the Charter of the United Nations, the registration date of the Agreement is 22 September 1949." (United Nations Treaty Series, vol. 46, 1950, I, No. 708, p. 163.)

(b) Not infrequently, however, the material transmitted for registration has not been complete and thus all the requirements of article 5 of the regulations have not been complied with. In such cases the registering party is requested by the Secretariat to provide the complementary documentation. It is the practice of the Secretariat to consider the date of receipt of the requested complementary documentation as the date of registration of the agreement.

(c) With regard to the agreements registered ex officio by the United Nations, article 6 of the regulations provides that the date of registration shall be the date on which a treaty or agreement first came into force between two or more parties thereto. This is the earliest date possible under article 1 of the regulations, according to which registration shall not take place until the treaty or agreement has come into force between two or more of the parties thereto. 32/

(d) Although it has not been expressly provided in the regulations, the Secretariat has also applied the provisions of article 6 to the certified statements registered under article 2 of the regulations.

Article 7

A certificate of registration signed by the Secretary-General or his representative shall be issued to the registering party or agency and also, upon request, to any party to the treaty or international agreement registered.

Note

(a) Article 7 of the regulations, as originally adopted under the terms of resolution 97 (I), provided that a certificate of registration signed by the Secretary-General or his representative should be issued to the registering party or agency and also to all signatories and parties to the treaty or international agreement registered.

(b) In his report 33/ to the General Assembly at its fifth session, the Secretary-General, reviewing the economies which might be effected in the registration and publication of treaties and international agreements, mentioned the possible amendment of article 7 of the regulations to restrict the issuance of certificates of registration to the registering party or agency only. A proposal to this effect was submitted 34/ in the Sixth Committee. However, certain objections were raised and as a result, article 7 in its present form, as amended by General Assembly resolution 482 (V), provides for the issuance of certificates of registration also, upon request, to any party to the treaty or international agreement registered. The amendment was adopted with the understanding that the words "upon request" applied to both individual and standing requests for certificates of registration by States parties to the registered treaties. 35/

(c) According to established practice, no certificates of registration are issued in respect of agreements registered ex officio and in respect of certified statements registered pursuant to article 2 of the regulations.

32/ See paras. 32-34 below.

33/ G A (V), Annexes, vol. II, a.i. 54, p. 1, A/1408.

34/ G A (V), 6th Com., 246th mtg., p. 249.

35/ Such standing requests have been received from four Governments and certificates of registration are accordingly issued to these Governments.

(d) In view of the absence of any provisions to this effect in the regulations, no such certificates are issued in respect of agreements or certified statements filed and recorded in accordance with article 10 of the regulations.

Article 8

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

- (a) The serial number given in the order of registration;
- (b) The title given to the instrument by the parties;
- (c) The names of the parties between whom it was concluded;
- (d) The dates of signature, ratification or acceptance, exchange of ratification, accession, and entry into force;
- (e) The duration;
- (f) The language or languages in which it was drawn up;
- (g) The name of the party or specialized agency which registers the instrument and the date of such registration;
- (h) Particulars of publication in the treaty series of the United Nations.

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

3. The texts registered shall be marked "ne varietur" by the Secretary-General or his representative, and shall remain in the custody of the Secretariat.

Note

(a) As originally adopted by the General Assembly under resolution 97 (I), article 8 provided that the Register should be kept in all five official languages. This requirement was later modified by General Assembly resolution 482 (V) and the Register is kept at present in the English and French languages only.

(b) At first, the Secretariat made all entries by hand in a bound volume. However, practice showed that this method had certain disadvantages, such as the loss of time and the high cost involved, particularly in view of the original requirement of article 8 that the register be kept in all five languages. The procedure was later simplified by having the entries typed on numbered sheets which were subsequently to be bound into volumes. In his report 36/ on the registration and publication of treaties, the Secretary-General informed the General Assembly, at its third session, of the new method which is currently employed by the Secretariat.

36/ G A (III/1), Plen., Annexes, p. 61, A/613.

(c) It may be mentioned that, in order to preserve the continuity of reference and to avoid duplicating registration numbers, the certified statements relating to an agreement already registered as well as supplementary agreements thereto are registered under the same number as the principal agreement.

Article 9

The Secretary-General, or his representative, shall issue certified extracts from the Register at the request of any Member of the United Nations or any party to the treaty or international agreement concerned. In other cases he may issue such extracts at his discretion.

Note

(a) It was the view of Sub-Committee 1 when it drafted this article that the provision in question should be mandatory in the case of a request from a Member of the United Nations or any party to the treaty or agreement, but permissive in other cases, as, for example, in the cases of international organizations or private persons, it being left to the Secretary-General to determine whether the extract should be issued.

(b) One certified extract has so far been issued at the request of a Member State.

Part Two

Filing and Recording [37/]

Article 10

The Secretariat shall file and record treaties and international agreements, other than those subject to registration under article 1 of these regulations, if they fall in the following categories:

(a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies;

(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, but which were not included in the treaty series of the League of Nations;

(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 which were not included in the treaty series of the League of Nations, provided, however, that this paragraph shall be applied with full regard to the provisions of the resolution of the General Assembly of 10 February 1946 set forth in the Annex to these regulations. [38/]

Article 11

The provisions of articles 2, 5 and 8 of these regulations shall apply, mutatis mutandis, to all treaties and international agreements filed and recorded under article 10 of these regulations.

37/ See paras. 71-81 below.

38/ See para. 76 below.

Note

(a) In accordance with this article, the Secretariat applies the provisions of articles 2, 5 and 8 of the regulations to all treaties and international agreements filed and recorded. With regard to article 8, however, Sub-Committee 1 was of the opinion that treaties and international agreements filed and recorded under article 10 of the regulations should not be included in the Register provided for in article 1 of the regulations, nor should the words "register" or "registration" be used in respect of such instruments, in view of the legal connotation reserved for these terms under Article 102. Accordingly, the Secretariat maintains a separate record of treaties and international agreements filed and recorded. This record is kept in English and French, and comprises all information required by the terms of article 8.

(b) Furthermore, although not expressly provided for in the regulations, the Secretariat applies to treaties and international agreements the rules laid down in article 1 (2) and (3), article 3 (1) and article 6 of the regulations.

(c) Moreover, pursuant to the provisions of article 12, all treaties and international agreements, as well as certified statements, filed and recorded, are published, together with those registered, in the Treaty Series, and, pursuant to the provisions of article 13, a list of treaties and agreements filed and recorded is published monthly along with that of treaties and agreements registered.

Part Three

Publication [39/]

Article 12

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

2. The Secretariat shall, when publishing a treaty or agreement under paragraph 1 of this article, include the following information: the serial number in order of registration or recording; the date of registration or recording; the name of the party or specialized agency which registered it or transmitted it for filing; and in respect of each party the date on which it has come into force and the method whereby it has come into force.

Article 13

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

Note

(a) The first such statement published by the Secretariat comprised a list of agreements registered or filed and recorded during the period from 14 December 1946, the date of approval by the General Assembly of the regulations, to 31 March 1947; a statement has since been issued regularly every month.

39/ See paras. 82-101 below.

(b) In addition to the dates and numbers of registration and recording, as provided in article 13 of the regulations, the monthly statement furnishes information relating to the entry into force of the agreement, the registering party or agency and the official languages of the agreement. It is divided into two parts: part one, listing treaties registered; part two, listing treaties filed and recorded. In addition, it contains Annexes A, B and C, the first two being devoted to certified statements and supplementary agreements relating to the agreements registered and filed and recorded, respectively, and Annex C listing subsequent actions relating to the treaties registered with the League of Nations.

Article 14

The Secretariat shall send to all Members of the United Nations the series referred to in article 12 and the monthly statement referred to in article 13 of these regulations.

Annex

The annex to General Assembly resolution 97 (I) reproduced the text of General Assembly resolution 23 (I), entitled "Registration of Treaties and International Agreements".

II. ANALYTICAL SUMMARY OF PRACTICE

A. Registration of treaties and international agreements

1. *Requirements for registration*

a. SCOPE OF THE TERM "TREATY AND INTERNATIONAL AGREEMENT"

18. Compulsory registration under Article 102 applies to "Every treaty and every international agreement" entered into by a Member of the United Nations after the coming into force of the Charter.

19. At the second part of the first session of the General Assembly, an attempt was made by Sub-Committee 1 of the Sixth Committee (see paragraph 9 above), when drawing up the regulations, to define more specifically the categories of treaties and international agreements requiring registration. However, the discussion on the subject was inconclusive and, as a result, it was decided to retain in article 1 of the regulations the general terms of Article 102 of the Charter.

20. Accordingly, article 1 (1) of the regulations follows closely the language of Article 102 (1), the only change being the addition, after the words "Every treaty or international agreement", of the phrase "whatever its form and descriptive name". In explanation of the position taken in this respect, the Sixth Committee noted in its report ^{40/} to the General Assembly on the registration and publication of treaties and international agreements that, in drawing up the terms of the regulations, Sub-Committee 1 had had regard to the "undesirability of attempting at this time to define in detail the kinds of treaty or agreement requiring registration under the Charter, it being recognized that experience and practice will in themselves aid in giving definition to the terms of the Charter."

^{40/} G A (I/2), Plen., p. 1586, annex 91 (A/266).

21. At the second session of the General Assembly, a further attempt to define the categories of treaties and international agreements requiring registration was made in the Sixth Committee, where an extensive discussion 41/ took place on the subject.

22. Attention was called to the fact that a great many of the international agreements concluded were of a financial, commercial or technical character, but, as the Charter referred to "Every treaty and every international agreement" there was no doubt that such agreements must be registered. It was recalled that article 1 of the regulations extended further guidance in the phrase "whatever its form and descriptive name." Thus, an exchange of notes or letters, a protocol, an accord, even a unilateral engagement accepted by the other party were all to be registered. When the meaning of the term "international agreement" was discussed, the view was expressed that - deliberately excluding, for the sake of simplifying the analysis of the agreements to which the United Nations or a specialized agency was a party - an agreement constituted an international agreement only if both parties were States or Governments. It was suggested, however, that an agreement between two Governments was not an international agreement if it concerned a transaction of the same character as that which could be concluded by private persons or companies, and was governed by private international law and municipal law rather than by public international law.

23. During the debate, the question was raised whether, in the case of an agreement whereby assets of private citizens, which had been blocked in a non-occupied country during the occupation of their country, were subsequently released, it was necessary to register that agreement, since its importance and interest came to an end after the release of the assets concerned. It was argued that, although agreements of this nature fell under the provisions of Article 102, there was no point in registering them if they were not to be invoked before any organ of the United Nations. However, this argument was opposed on the ground that the obligation to register was in no way diminished by the sanction provided in Article 102 (2). The view was also expressed that when an agreement provided for the settlement of a financial claim and the claim was liquidated there was no absolute obligation to register.

24. In connexion with the observation in the report 42/ of the Secretary-General that the Secretariat had taken steps for the ex officio registration of the declarations accepting the obligation of the Charter by new Members of the United Nations, and of the declarations of acceptance of the optional clause recognizing the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute, having considered such instruments to constitute international agreements, it was stated in the Committee that such action was justified. This was particularly the case in the light of the comment 43/ contained in the report of Committee IV/2 of the United Nations Conference on International Organization, which drafted the text of Article 102.

41/ G A (II), 6th Com., 54th mtg., p. 112.

42/ G A (II), 6th Com., 54th mtg., p. 343, annex 12 (A/380).

43/ This comment reads as follows: "The Committee has proposed the adoption of the term 'agreement' in preference to the term 'engagement' which may fall outside the strict meaning of the word 'agreement'. The word 'agreement' must be understood as including unilateral engagements of an international character which have been accepted by the state in whose favor such an engagement has been entered into." Documents of the United Nations Conference on International Organization, vol. 13, doc. 933, IV/2/42, p. 705.

25. In the course of the discussion, a suggestion was made that a sub-committee be established to provide a definition of the exact meaning of the term "treaties and international agreements". However, doubts were expressed whether there was need for it at that time. It was considered premature to attempt a precise definition of international agreements; it might be left to gradual development, while various specific instances accumulated. It was, however, considered desirable that the Committee should continue in the future to exchange opinions on the subject and, if uniformity of view resulted, to record that fact in the report of the Rapporteur as a means of clarifying a provision of the Charter.

26. The question of the definition of the term "international agreement" was raised ^{44/} again at the third session of the General Assembly during the discussion in the Sixth Committee on a draft resolution on the registration and publication of treaties and international agreements. An amendment to the draft resolution was submitted under which the following paragraph would have been added to the preamble: "Considering that the phrase 'international agreement' should be understood in a broad sense". It was pointed out that the purpose of the amendment was to show clearly that the expression "international agreement" was intended to cover the greatest possible number of agreements, including unilateral undertakings. In view of the fact that the original text of the draft resolution referred to "every treaty and every international agreement", a term which appeared adequately to cover the substance of the amendment, the amendment was withdrawn by its sponsor on the understanding that the vote on the resolution would have the significance and purport which the amendment had intended to stress.

27. At the fifth session of the General Assembly, during the discussion ^{45/} in the Sixth Committee on possible economy measures in the registration and publication of treaties and international agreements, the view was expressed that, since it appeared from the conclusions in the report of the Advisory Committee on Administrative and Budgetary Questions that the Secretary-General might be authorized to dispense with the publication of certain treaties dealing with commercial or technical matters of an ephemeral character, it should be emphasized that such agreements might still constitute important precedents for the future of international law. It was recalled that, at a recent international conference, the problem of economic aggression through treaties had been discussed, but had remained unsolved; it would be deplorable if there were any implication that the conclusion of secret treaties was dangerous only if the treaties were political in nature.

28. In reply, the representative of the Secretary-General explained that the Advisory Committee had never suggested that treaties which were not of a political nature should not be published. The Advisory Committee had simply suggested that it might not be necessary to publish certain annexes to treaties dealing with commercial or technical matters of an ephemeral character. The treaties themselves would continue to be published.

29. While the General Assembly has not laid down a precise definition of the term "treaty and international agreement", the matter being left to gradual development through practice, the Secretariat has been faced on several occasions with inquiries from various Governments as to whether a given agreement or category of agreements was subject to registration. Moreover, in some instances in which there was doubt as to whether an agreement transmitted for registration could be so registered, the

^{44/} G A (III/1), 6th Com., 79th and 80th mtgs., pp. 148-165.

^{45/} G A (V), 6th Com., 246th mtg., p. 249.

Secretariat has felt obliged to initiate consultations with the registering party in order to clarify the matter.

30. In all such cases, the Secretariat has based its position, in addition to the provisions of Article 102 and article 1 of the regulations, on general principles of international law and on the practice already developed, taking into account as a guide the views expressed on the subject during the discussions in the Sixth Committee of the General Assembly.

31. In particular, the Secretariat has taken the following position in respect to the question whether the various types of agreements set forth below could be registered: 46/

(a) Agreements between the United Nations and national committees for the United Nations Appeal for Children campaign, in view of the character of the latter party, were not considered as falling within the category of "international agreements";

(b) Similarly, agreements between States and certain international organizations such as the International Tuberculosis Campaign, the International Committee of Military Medicine and Pharmacy and the International Patents Institute, were not considered to be "international agreements" within the meaning of Article 102, since the organizations concerned were either not inter-governmental or, having been created by inter-governmental agreements, did not appear to have a treaty-making capacity;

(c) Agreements between States and certain governmental or semi-governmental agencies, such as the Institute of Inter-American Affairs and the Export-Import Bank, were also considered as not subject to registration after consultation with the Governments concerned;

(d) Agreements between States (or international organizations) and Governments of dependent territories were considered as international agreements for the purpose of Article 102 only if it was possible to establish that the agreement concerned was formally binding on the State responsible for the conduct of the foreign relations of the dependent territory, and consequently to show in the Register that the latter State and not the dependent territory was a party to the agreement;

(e) Minutes of meetings between the representatives of Governments, where a majority of items minuted involved observations of fact, explanations, statements of views or notes of matters left for further consideration, were not considered to constitute, in themselves, a treaty or international agreement in the sense of the Charter;

(f) Resolutions, adopted by the Assembly of a specialized agency in the performance of its functions pursuant to the provisions of the Constitution of the agency concerned, were not considered as subject to registration;

(g) The Security Council resolution of 10 January 1947, 47/ by which the Council accepted certain responsibilities envisaged under the Treaty of Peace with Italy with

46/ See also para. 24 above and paras. 47-49 below.

47/ S C, 2nd yr., No. 3, 91st mtg., p. 60.

regard to the Free Territory of Trieste, was not considered as an international agreement requiring registration; 48/

(h) Postal agreements (even though concluded, for example, between the respective postmasters-general) were considered as subject to registration, provided that the States parties to the agreement were formally bound thereby;

(i) Commercial agreements, concluded for the duration of one year or less, and agreements concluded by means of an exchange of notes with regard to the abolition of visas, were also considered as subject to registration since the obligation to effect registration under Article 102 extended to all international agreements, regardless of their subject-matter, their form and descriptive name, or their duration, and the sole criterion would therefore seem to be whether an agreement was a "treaty or international agreement" within the meaning of the Charter, as well as an agreement between the categories of parties laid down by the Charter and the regulations.

b. ENTRY INTO FORCE OF TREATIES AND INTERNATIONAL AGREEMENTS

32. Article 1 (2) of the regulations lays down the rule that registration cannot take place prior to the entry into force of an agreement between two or more parties. However, in adopting this rule at the first part of the first session of the General Assembly, Sub-Committee 1 generally agreed that the term "entry into force" was intended to be interpreted in its broadest sense. It was the view of the Sub-Committee that, in practice, treaties which, by agreement, were being applied provisionally by two or more parties were, for the purpose of article 1 (2) of the regulations, in force.

33. This point was stressed both in the report 49/ of Sub-Committee 1 to the Sixth Committee and in the report 50/ of the latter to the General Assembly at the second part of its first session. The following statement was made in both reports: "It was recognized that, for the purpose of article 1 of the regulations, a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto".

34. In a number of cases to which this interpretation applies, the registration of an agreement was effected prior to its definitive entry into force. 51/ Apart from these

48/ In reply to an inquiry on this subject from a Government, the Secretariat stated that it could not find any indication, either in the text of the Security Council resolution or in verbatim records of the meetings preceding its adoption, that the Security Council, in adopting the resolution, had intended to conclude a separate international agreement on behalf of the Organization. It was further noted that neither the request for the assumption by the Council of such responsibilities submitted to the Council by the Governments concerned nor the text of the Treaty itself had envisaged that the acceptance on the part of the Security Council of the responsibilities conferred upon it would necessitate the conclusion of an agreement. In the circumstances, the Secretariat did not consider that the resolution of the Security Council of 10 June 1947 was of a different nature than other decisions taken by the Council in accordance with the functions and powers conferred upon it by the Charter or that it constituted an international agreement requiring ex officio registration.

49/ G A (I/2), 6th Com., p. 200, annex 8 b (A/C.6/125).

50/ G A (I/2), Plen., p. 1586, annex 91 (A/266).

51/ See, for example: United Nations Treaty Series, vol. 17, 1948, I, No. 281, p. 273; vol. 30, 1949, I, No. 452, p. 145; vol. 31, 1949, I, No. 485, p. 435; vol. 42, 1949, I, No. 646, p. 125; vol. 55, 1950, I, No. 814, p. 194.

instances, the Secretariat has, on several occasions, declined to proceed with the registration of an agreement submitted prior to its actual entry into force. On one occasion, the registering party, after having effected the registration of an agreement, informed the Secretary-General that the date of its entry into force had been postponed for one year. As a result the registration took effect almost a year before its entry into force. However, the registration was not cancelled and the agreement was published in the chronological order of registration with an accompanying explanatory note. ^{52/}

2. *Obligation to register*

a. REGISTRATION BY MEMBER STATES

35. Both at its second and third sessions, the General Assembly reiterated its view that, under Article 102, the registration of treaties and international agreements by Member States was obligatory.

36. Under resolution 172 (II), adopted at its second session, the General Assembly drew the attention of Member States to the obligations imposed by Article 102.

37. Even more explicit was resolution 254 B (III), adopted at the first part of the third session, by which the General Assembly, having considered that all Member States had, under Article 102, assumed the obligation to register with the Secretariat every treaty and international agreement entered into after the coming into force of the Charter, requested "that each of the Member States take cognizance of its obligation under Article 102 and take immediate steps to fulfil this obligation."

38. During the discussion ^{53/} of resolution 172 (II) at its draft stage in the Sixth Committee at the second session of the General Assembly, it was pointed out that, under Article 102 (1), there existed an obligation to register every treaty and international agreement. That obligation was absolute and in no way diminished by the scope of the sanction provided in Article 102 (2). The Charter contained many instances of obligations not accompanied by sanctions, a fact which did not diminish the validity of those obligations. After recalling that Article 18 of the Covenant of the League of Nations had been aimed at eliminating secret diplomacy, it was further pointed out that the same general principle was the basis of Article 102 and that, therefore, it was not only a juridical duty but also in conformity with the tradition and with the spirit of the Charter that all treaties concluded by Member States should be registered with the Secretariat. It would vitiate the entire purpose of Article 102 if the obligation imposed were to be regarded as being optional. Several representatives who had participated in the United Nations Conference on International Organization at San Francisco referred to the discussions on the subject in Committee IV/2 where, they stated, it had been made entirely clear that the obligation imposed by Article 102 (1) was to be mandatory and not discretionary.

39. On the other hand, the opinion was expressed that Article 102 allowed States to exercise their own judgement on the necessity of registration, and if the Governments concerned considered that a treaty would not subsequently be invoked before an organ of the United Nations, then there was no necessity for registration.

^{52/} United Nations Treaty Series, vol. 23, 1948-1949, I, No. 346, p. 163.

^{53/} G A (II), 6th Com., 54th mtg., p. 112.

40. During the discussion 54/ on resolution 254 B (III) at its draft stage in the Sixth Committee at the first part of the third session of the General Assembly, there was general agreement that Article 102 was in fact mandatory; different views were expressed only in respect of the way in which that fact should be brought to the attention of the Member States or whether any resolution at all was necessary on the subject.

41. A particular case bearing upon the mandatory nature of the obligation upon Member States to register treaties and international agreements may be cited here. In connexion with the registration by a Member State of an agreement concluded with Spain, an objection to such registration was raised by a Member State in a communication addressed to the Secretary-General, in which it was pointed out that the registration of an agreement with Franco Spain, even if carried out at the request of a Member State, undoubtedly contradicted the spirit and letter of General Assembly resolutions 23 (I) and 39 (I). The deletion of the corresponding number in the Register was therefore requested.

42. In his reply, the Secretary-General stated that the agreement in question had been registered in accordance with General Assembly resolution 97 (I), pursuant to which registration was normally effected by the act of one of the parties and not by any action of the Secretariat. As regards the provisions of resolution 23 (I), he pointed out that, while the resolution laid down that the arrangements made for the publication of treaties or international agreements which non-member States might voluntarily transmit should not extend to treaties or international agreements transmitted by any non-member State such as Spain, it did not modify the scope of obligations imposed upon Members of the United Nations by Article 102, namely, the obligation to register treaties concluded by them after the date of the entry into force of the Charter. He also recalled the discussion 55/ in the Sixth Committee at the first part of the first session of the General Assembly, in the course of which it had been made clear that the draft resolution 56/ under discussion could not have the effect of preventing the publication of treaties concluded with the then Government of Spain by Member States of the United Nations. As regards resolution 39 (I), the Secretary-General stated that the resolution was concerned with the relations between Members of the United Nations and Spain and not with the regulations regarding the registration of treaties and international agreements, which it did not seek to amend. In the circumstances, he regretted that he was unable to consider the request for the deletion from the register of a registration effected by a Member State of an agreement which it had concluded.

b. REGISTRATION BY NON-MEMBER STATES

43. Article 102 does not apply to treaties and international agreements concluded between non-member States. Following the recommendation contained in resolution 23 (I), the General Assembly set forth in the regulations special provisions for voluntary submission of such treaties by non-member States for the purpose of filing and publication. 57/ However, in the course of drafting the regulations at the first part of the first session, a question was raised in Sub-Committee 1 as to the position of non-member States in regard to treaties and international agreements concluded by Members with non-member States after the entry into force of the Charter; in accordance with the provisions of Article 102 (1), those instruments should be subject to

54/ G A (III/1), 6th Com., 79th and 80th mtgs., pp. 148-165.

55/ G A (I/1), 6th Com., 8th mtg., p. 19.

56/ The draft resolution in question became resolution 23 (I) upon its adoption by the General Assembly.

57/ See paras. 71-81 below.

registration. While it was recognized that only Members were under the obligation to register, the Sub-Committee considered that, in view of the sanction provided in Article 102 (2), non-members should have the right to effect registration of such treaties. In that connexion, attention was drawn to the following interpretation ^{58/} of Article 102 (2) by Committee IV/2 of the United Nations Conference on International Organization: "This provision also covers treaties and agreements to which both members and non-members are parties. It is open to the latter to have such treaties or agreements registered. Moreover it is necessary that they should be able to do so, seeing that their right to invoke the treaty or agreement before an organ of the Organization is made subject to registration."

44. As a result, a rule was laid down in article 1 (3) of the regulations providing for registration by any party.

C. EX OFFICIO REGISTRATION BY THE UNITED NATIONS

45. The regulations, as originally adopted by the General Assembly under resolution 97 (I), provided, under article 4 (1), that every treaty or international agreement subject to the provisions of article 1 of the regulations should be registered ex officio by the United Nations in cases in which the United Nations was a party to the treaty or agreement or in which the United Nations had been authorized under the terms of the treaty or agreement to effect registration.

46. During the discussion on the article in Sub-Committee 1 at the first part of the first session of the General Assembly, it was also proposed that ex officio registration should be extended to instruments concluded under the auspices of the United Nations. The proposal, however, met with objections on the grounds that the expression "under the auspices of" lacked precision and that, in addition to multilateral agreements, which the Committee seemed to have in mind, there might be also bilateral agreements resulting from conferences called by the United Nations and that it was better to leave the registration of such political treaties to the States parties thereto. The proposal was not adopted. Instead, it was suggested that the Secretariat should recommend the insertion of provisions authorizing the United Nations to effect ex officio registration in treaties and agreements proposed by the United Nations or resulting from conferences convened by the United Nations.

47. In his report ^{59/} on the registration and publication of treaties and international agreements submitted to the General Assembly at its second session, the Secretary-General stated that ex officio registration by the Secretariat had necessitated a detailed examination in the case of certain treaties and international agreements. In particular, steps had been taken for the ex officio registration of the instruments accepting the obligation of the Charter transmitted to the Secretary-General by States admitted to membership in the United Nations in accordance with Article 4 of the Charter and of the declarations made by the States parties to the Statute of the International Court of Justice, recognizing as compulsory the jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute. ^{60/}

48. Under resolution 172 (II), the General Assembly took note of the above-mentioned report of the Secretary-General.

^{58/} Documents of United Nations Conference on International Organization, vol. 13, p. 796, doc. 651, IV/2/A/4(1).

^{59/} G A (II), 6th Com., p. 343, annex 12 (A/380).

^{60/} See para. 24 above.

49. Ex officio registration was subsequently extended to the declarations by which States accepted the conditions determined by the General Assembly for becoming a party to the Statute of the International Court of Justice.

50. In his report 61/ on the registration and publication of treaties and international agreements to the General Assembly at its third session, the Secretary-General noted that the Secretariat had applied the procedure of ex officio registration to the Trusteeship Agreements approved by the General Assembly or the Security Council.

51. At its fourth session, the General Assembly, by resolution 364 B (IV), amended article 4 (1) of the regulations by the addition of sub-paragraph (c) which extended ex officio registration to multilateral treaties or agreements of which the United Nations was the depositary.

52. The adoption of the amendment was preceded by a lengthy discussion 62/ in the Sixth Committee, particularly with reference to Article 102 (1).

53. In the course of the discussion, it was pointed out that the functions of the United Nations with regard to registration of treaties were based on Article 102, under the provisions of which Members of the United Nations alone had the right and the duty to register treaties. That principle had been taken as a basis for article 4 of the regulations, according to which ex officio registration was possible only if the United Nations was a party to a treaty or if the power of registration had been delegated to the United Nations by the parties to the treaty. The authority to register ex officio was by no means the same as that of being the depositary of a treaty; consequently, to include a provision for ex officio registration by the United Nations of treaties of which the latter was only the depositary would go much further than the original provision, and would imply a specific interpretation of Article 102. Furthermore, Article 102 stated that treaties should be registered with, rather than by, the Secretariat, and therein lay an important legal distinction.

54. It was argued, on the other hand, that the proposed amendment to the regulations was in keeping with the spirit of Article 102, which was designed to prevent secret diplomacy. Since the purpose of Article 102 was not merely formal registration, but also publication of treaties, and since publication was impossible without prior registration, the United Nations had the moral obligation to register as well as to publish treaties deposited with it. In view of the sanction provided in Article 102 (2), the anomalous situation might arise in which treaties deposited, but not registered, with the United Nations, could not be invoked before any organ of the United Nations. The opinion was also expressed that the granting to the Secretary-General of a general authorization to register treaties in certain cases, would not be inconsistent with Article 102 which merely provided that treaties "shall as soon as possible be registered", but did not specify who was to register them. No violation of Article 102 was involved in the proposal to extend ex officio registration. If three or four States could give such authorization to the United Nations by a provision in an agreement, then all Member States could, by a decision taken in the General Assembly, certainly give the United Nations the power to register treaties. Moreover, to make the United Nations the depositary was tantamount to registration,

61/ G A (III/1), Plen., Annexes, p. 61, A/613.

62/ G A (IV), 6th Com., 174th mtg., p. 209.

which was, thereafter, a pure formality. It was not necessary to find an express authorization in the Charter for everything. If it was the view of the Sixth Committee that registration should be a proper function of the United Nations and nothing in the Charter prevented it, then a provision under which the United Nations might register treaties should be adopted.

d. REGISTRATION BY SPECIALIZED AGENCIES

55. In addition to ex officio registration by the United Nations, article 4 (2) of the regulations provides in specified cases for the registration of treaties and international agreements by specialized agencies. However, while article 4 (1) imposes an obligation on the United Nations in respect of ex officio registration, article 4 (2) is only permissive in its application to specialized agencies. A specialized agency may register a treaty or international agreement with the Secretariat in the following cases: (a) where the constituent instrument of the specialized agency provides for such registration, 63/ (b) where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument, 64/ and (c) where the specialized agency has been authorized under the treaty or agreement to effect registration. 65/ A proposal under which a specialized agency might also register agreements with the Secretariat in cases in which the instruments had been concluded under its auspices was not accepted by Sub-Committee 1, which also rejected 66/ a similar proposal for ex officio registration.

56. It was the understanding of Sub-Committee 1, in drafting the relevant provisions at the second part of the first session of the General Assembly, that, under Article 102, the parties were not relieved of the obligation to register until the specialized agency had actually effected the registration of the treaty or agreement with the Secretariat. In order to avoid uncertainty in that regard, it was assumed that the Secretariat would enter into arrangements with the specialized agencies under which the latter would undertake to act regularly as a channel for submission of the treaties and international agreements to the Secretariat, as provided in article 4 (2) of the regulations. 67/

63/ Such provision is contained in article 20 of the Constitution of the International Labour Organisation (ILO); article XIV of the Constitution of the Food and Agriculture Organization of the United Nations (FAO).

64/ The relevant provision is contained in articles 81 and 83 of the Convention on International Civil Aviation.

65/ It was contemplated that this provision would be applied particularly in respect of treaties or agreements proposed by a specialized agency or resulting from a conference called by a specialized agency.

66/ See para. 46 above.

67/ An agreement to this effect was concluded on 17 February 1949 between the United Nations and ILO (United Nations Treaty Series, vol. 26, 1949, II, No. 154, p. 323). An informal arrangement in this regard was also reached between the Secretariat of the United Nations and the Secretariat of the International Civil Aviation Organization (ICAO). In this connexion, the Council of ICAO adopted on 1 April 1949 the "Rules for registration with ICAO of aeronautical agreements and arrangements" pursuant to Articles 81 and 83 of the Convention on International Civil Aviation. Article 8 of these rules provides that:

"Any aeronautical agreement or arrangement to which a Contracting State is a party and which is registered with ICAO shall, except in any case where the State concerned has notified the Organization that it intends to do so itself, be transmitted by the Secretary-General of ICAO for registration to the Secretariat of the United Nations in the cases provided by Article 4 (2) of the United Nations Regulations on registration and publication of treaties and international agreements."

57. Under the general rule laid down in article 1 (3) of the regulations, a specialized agency may also register those agreements subject to registration in accordance with Article 102 (1) to which a specialized agency is itself a party.

e. TIME LIMIT FOR REGISTRATION

58. Article 102 (1) provides that treaties and international agreements shall be registered "as soon as possible". The question of the interpretation of the phrase "as soon as possible" was raised in Sub-Committee 1 at the first part of the first session of the General Assembly in connexion with a memorandum which had been submitted for its consideration by the representative of France. The memorandum 68/ stated that "... in view of the possible implication of paragraph 2 of Article 102, it is all the more important to determine, with greatest possible precision, the various kinds of instruments to be registered and, in respect of each kind of instrument, the time when this formality should be accomplished".

59. However, the Sub-Committee decided, with regard to the points raised in the above-quoted memorandum, that the matter was beyond its competence. Both the reports of Sub-Committee 1 69/ and of the Sixth Committee 70/ made reference to that decision.

60. The question of the interpretation of the phrase "as soon as possible" was raised 71/ again in the Sixth Committee at the second session of the General Assembly. It was suggested during the discussion of the report 72/ of the Secretary-General on the registration and publication of treaties that it might be advisable to set a time limit for the registration of treaties; otherwise a treaty or international agreement might be registered only a short time before it was invoked by the Government concerned, which would have followed the registration procedure only for the purpose of being able to invoke the treaty in question. On the other hand, it was pointed out that the specification of such a time limit exceeded the terms of the Charter.

61. No decision was taken on this matter and the subject was not raised at any of the subsequent sessions of the General Assembly.

f. EFFECT OF REGISTRATION

62. Under the provisions of article 3 of the regulations, registration by a party, in accordance with article 1 of the regulations, relieves all other parties of the obligation to register, and ex officio registration or registration by a specialized agency effected in accordance with article 4 of the regulations relieves all parties of the obligation to register.

63. Thus, article 3 makes it clear that only one registration is necessary and once an instrument has been registered, the obligation to register has been fulfilled for all parties.

64. On numerous occasions, the Secretariat has received for registration an agreement previously registered by another party or, pursuant to article 4 (2)

68/ A/C.6/W.3.

69/ G A (I/2), 6th Com., p. 200, annex 8 b (A/C.6/125).

70/ G A (I/2), Plen., p. 1586, annex 91 (A/266).

71/ G A (II), 6th Com., 54th mtg., p. 112.

72/ G A (II), 6th Com., p. 343, annex 12 (A/380).

of the regulations, by a specialized agency. In such cases, the Secretariat has informed the party concerned that the agreement had already been registered, indicating the date of registration, the number under which the agreement was registered and the name of the party or specialized agency which had effected the registration.

65. The material provided in such cases by parties other than the original registrant is, however, scrutinized by the Secretariat and, if any discrepancies are noted, they are called to the attention of the parties. Corrections resulting from consultation with the parties are recorded in the register and published in the Treaty Series. Examples of such corrections cover matters such as conflicting information as to the date of signature or entry into force of an agreement, the omission by one party of certain annexes or exchanges of notes accompanying the agreement, and the transmittal as part of the agreement of an exchange of notes which another party had considered to constitute a separate agreement.

66. On a few occasions, 73/ the registration of the agreement was effected jointly by two contracting parties.

3. Registering parties

67. Subject to article 4 of the regulations which, in specified cases provides for ex officio registration 74/ by the United Nations or for registration by specialized agencies, 75/ article 1 (3) of the regulations states that registration may be effected by any party to the treaty or international agreement. When discussing 76/ this provision at the second part of the first session of the General Assembly, Sub-Committee 1, having noted that Article 102 (1) applied to treaties and international agreements to which both Members and non-members were parties, took the position that, in view of the sanction provided in Article 102 (2), any party to a treaty or agreement which was subject to registration should be able to effect its registration.

68. During the discussion in the Sub-Committee, it was also stressed that the provision of article 1 (3) of the regulations emphasized that registration was effected either by the act of one of the parties or pursuant to article 4 of the regulations, and not by any action on the part of the Secretariat. It was pointed out that the provision had the merit of making it clear that, once a State submitted an instrument to the Secretariat, it ran no risk of failure or delay in registration by reason of subsequent administrative procedure. The Sub-Committee felt that that view was supported by the language of the Charter, which spoke of registration "with" rather than "by" the Secretariat. In its report 77/ to the General Assembly, the Sixth Committee specifically noted that point in the following words: "It was agreed that registration is effected by the act of one of the parties (or pursuant to article 4 of the regulations) and not by any action by the Secretariat".

69. A technical point in connexion with the registration of multilateral treaties was raised in the Sixth Committee at the second and third sessions of the General Assembly.

73/ See United Nations Treaty Series, vol. 37, 1949, I, Nos. 580, 581 and 582, pp. 227, 333 and 369; vol. 49, 1950, I, No. 747, p. 3; vol. 69, 1950, I, p. 3.

74/ See paras. 45-54 above.

75/ See paras. 55-57 above.

76/ A/C.6/Sub.1/W.19.

77/ G A (I/2), Plen., p. 1586, annex 91 (A/266).

At both sessions, the suggestion was made by the Secretariat that, in the case of multilateral agreements, it would be desirable that such agreements be presented for registration by the Government having custody of the original document; that Government should also take the initiative in registering any subsequent actions relating to the agreement in question. This procedure would not only facilitate the work of the Secretariat, but would also avoid duplication of effort on the part of the Governments concerned. The Sixth Committee, in its reports 78/ to the General Assembly both at the second and third sessions, took note of the desirability of following such a procedure which, with a few exceptions, has since become general practice.

70. In this connexion, it may be noted that the Secretariat, in following this practice, has accepted for registration multilateral agreements submitted by an inter-governmental organization which, in its capacity as depositary of the agreements, was expressly authorized therein to effect their registration. 79/ The acceptability of such a procedure, within the terms of the existing regulations for registration, was based on the view that the authorization contained in the agreement allowed the Secretary-General to treat its submission by the inter-governmental organization as being tantamount to registration by the States parties themselves.

B. Treaties and international agreements not subject to registration

71. Article 102 limits the obligation of registration to treaties and international agreements entered into by any Member of the United Nations after the coming into force of the Charter. 80/ It is apparent that this obligation does not cover two principal types of situations: (1) treaties and international agreements entered into by a Member prior to the coming into force of the Charter and (2) treaties and international agreements entered into either before or after the coming into force of the Charter, but to which no Member is a party.

72. As to the first situation, the General Assembly, by resolution 23 (I), requested the Secretary-General to renew the invitation to Member Governments to transmit to the Secretariat for filing and publication those treaties and international agreements which had not been included in the Treaty Series of the League of Nations, but which had been entered into in the recent years before the date of the entry into force of the Charter - an invitation previously issued 81/ by the Executive Secretary on the recommendation of the Executive Committee to the Preparatory Commission.

78/ G A (II), Plen., vol. II, p. 1564, annex 19 (A/457); G A (III/1), Plen., Annexes, p. 300, A/698.

79/ United Nations Treaty Series, vol. 21, 1948, I, No. 77, p. 77; vol. 30, 1949, I, No. 449, p. 55.

80/ Under the practice established by the Secretariat, the date on which an agreement was signed or otherwise authenticated determines whether it falls within the scope of application of Article 102. Thus, several agreements, having been signed prior to the date of entry into force of the Charter, were filed and recorded, although they came into force after that date. See, for example, United Nations Treaty Series, vol. 2, 1947, II, No. 23, p. 307; vol. 3, 1947, II, No. 25, p. 313; vol. 5, 1947, II, No. 34, p. 263; vol. 6, 1947, II, No. 39, p. 359; vol. 9, 1947, II, No. 53, p. 373; vol. 10, 1947, II, Nos. 61, 62 and 67, pp. 193, 203 and 294; vol. 15, 1948, II, No. 102, p. 295; vol. 32, 1949, II, No. 177, p. 381; vol. 67, 1950, II, No. 227, p. 303; vol. 73, 1950, II, Nos. 242 and 243, pp. 223 and 237.

81/ Report by the Executive Committee to the Preparatory Commission of the United Nations, PC/EX/113/Rev.1, 12 Nov. 1945, chap. V, p. 68.

73. With respect to the second situation, the General Assembly considered it desirable, as a matter of practical convenience, that arrangements be made for the filing and publication of any treaties or international agreements which non-member States might voluntarily transmit, whether entered into before or after the date of the entry into force of the Charter, so long as they had not been included in the Treaty Series of the League of Nations. Accordingly, the General Assembly, also under resolution 23 (I), instructed the Secretary-General to receive such instruments as well.

74. Thus, under resolution 23 (I) the General Assembly initiated the system of voluntary submission by both Members and non-members of the United Nations, of treaties and international agreements not subject to registration, for the purpose of filing and publication.

75. It was pointed out in the report 82/ of the Sixth Committee to the General Assembly, at the first part of its first session, that it was in the interest of the United Nations that treaties and international agreements of all nations, including non-members, be made public and that there did not appear to be any reason for not giving non-members the opportunity of transmitting their international agreements for publication, with the express understanding that such transmission would be regarded as a voluntary act based upon practical convenience and not involving any juridical consequences in so far as the relations between the non-member State and the United Nations or any Members of the United Nations were concerned.

76. During the discussion 83/ of resolution 23 (I) at its draft stage in the Sixth Committee, objections were raised against extending the arrangements for submission by non-member States of treaties for filing and publication to the Government of Franco Spain. An opinion was expressed, however, that there was no objection to the publication by the United Nations of any treaty concluded with Franco Spain as long as there was assurance that the United Nations would have no dealings with the current régime in Spain. As a result, the following passage was included in the second paragraph of the preamble of the draft resolution:

"It is desirable, as a matter of practical convenience, that arrangements should be made for the publication of any treaties or international agreements which non-member States may voluntarily transmit and which have not been included in the treaty series of the League of Nations. These arrangements should not, however, extend to treaties or international agreements transmitted by any non-member State such as Spain, the Government of which has been founded with the support of the Axis Powers and does not, in view of its origin, its nature, its record and its close association with the aggressor States, possess qualifications necessary to justify membership in the United Nations under the provisions of the Charter."

At the second part of the first session, the above resolution was incorporated in the form of an annex in the regulations and it was provided in sub-paragraph (c) of article 10 of the regulations, which relates to the filing and recording of treaties and international agreements transmitted by non-member States, that this paragraph "shall be applied with full regard to the provisions of the resolution of the General Assembly of 10 February 1946 set forth in the Annex to these regulations". In its

82/ G A (I/1), Plen., p. 591, annex 14 (A/31).

83/ G A (I/1), 6th Com., 7th and 8th mtgs., pp. 17 and 18.

report 84/ on the registration and publication of treaties and international agreements to the General Assembly, the Sixth Committee stated that,

"With respect to treaties and agreements received from non-member States pursuant to article 10 of the proposed regulations, the Committee included a proviso designed to make it clear that the arrangements provided for by this article do not extend to Franco Spain (see the resolution of the General Assembly of 10 February 1946)."

No agreement has ever been transmitted for filing and recording by the Government of Spain, though a number of agreements concluded with Spain were filed and recorded at the request of other States.

77. In presenting the report of the Sixth Committee to the General Assembly, the Rapporteur invited 85/ the attention of the General Assembly to the manner in which a careful distinction was made between registration, which was obligatory under the terms of the Charter, and the purely voluntary submission of treaties for filing and publication.

78. The arrangement for the voluntary submission of treaties and international agreements for filing and publication was made part of the regulations to give effect to Article 102. The rules governing this arrangement, which was designated as "filing and recording", are set forth in part II of the regulations. In their reports 86/ on the registration and publication of treaties and international agreements, both Sub-Committee 1 and the Sixth Committee noted that, in drafting the terms of the regulations, they had had regard to the desirability of adhering closely both to the Charter and to the terms of General Assembly resolution 23 (I), in particular taking account of the distinction drawn in the resolution between registration - applicable only to treaties and international agreements subject to Article 102 - and filing - applicable to other treaties and international agreements covered by the regulations. Both reports also stated that article 10 of the regulations was intended to implement the recommendations made by the General Assembly under resolution 23 (I) on the filing of treaties and international agreements not subject to Article 102, and did not apply to any treaty or agreement concluded by one or

84/ G A (I/2), Plen., p. 1586, annex 91 (A/266).

85/ G A (I/1), Plen., 28th mtg., p. 377.

86/ G A (I/2), 6th Com., p. 200, annex 8 b (A/C.6/125); G A (I/2), Plen., p. 1586, annex 91 (A/266).

more Members of the United Nations after 24 October 1945, the date on which the Charter had come into force. 87/

79. In fact, the regulations went beyond the recommendations of resolution 23 (I), where only agreements concluded by States Members and non-members had been mentioned, by providing for filing and recording of the agreements concluded by the United Nations, specialized agencies and inter-governmental organizations.

80. Article 10 of the regulations specifies the following categories of treaties and international agreements which may be filed and recorded:

1. Treaties and international agreements transmitted by States Members as well as non-members of the United Nations which were entered into before the coming into force of the Charter, but which were not included in the Treaty Series of the League of Nations;

2. Treaties and international agreements concluded between States non-members of the United Nations which were entered into after the coming into force of the Charter;

3. Treaties and international agreements entered into by the United Nations or by one or more of the specialized agencies.

The latter category was included in the regulations with the understanding that it would cover agreements between the United Nations and non-member States, between the United Nations and specialized agencies or inter-governmental organizations, between specialized agencies and non-member States, between two or more specialized agencies and between specialized agencies and inter-governmental organizations.

81. Apart from the difference in nomenclature, the procedure in respect of filing and recording is similar to that governing registration, and all treaties and international agreements filed and recorded are published, together with those registered, in the United Nations Treaty Series.

87/ In the course of drafting the regulations, a proposal was made in Sub-Committee 1 to the effect that the regulations should not apply to treaties or agreements which certain States, whether members or not, had concluded with quisling Governments during the Second World War. It was pointed out that the very fact that a quisling Government was a party to a treaty constituted a proof that such treaty was contrary to the aims of the United Nations and therefore should be considered as absolutely void. That attitude, it was stated, was fully in keeping with the terms of General Assembly resolution 23 (I). It was suggested that a special collection of such treaties might be established for the purpose of information and historical documentation, but the Secretariat, when publishing such a collection, should make it clear in advance that the treaties in question had no legal effect. Sub-Committee 1, however, decided that the matter was outside its terms of reference. This decision was recorded both in the report of Sub-Committee 1 and in the report of the Sixth Committee to the General Assembly which stated that the above-mentioned proposal was regarded as being beyond the competence of the Sub-Committee. (G A (I/2), 6th Com., 33rd mtg., p. 176; G A (I/2), 6th Com., p. 200, annex 8 b (A/C.6/125); and G A (I/2), Plen., p. 1586, annex 91 (A/266)).

C. Publication of treaties and international agreements

82. Pursuant to Article 102, the Secretariat is under obligation to publish every treaty and international agreement registered. Under resolution 97 (I), the General Assembly extended that obligation to treaties and international agreements filed and recorded in accordance with article 10 of the regulations. The procedure for the publication of treaties and international agreements is governed by the provisions of article 12 of the regulations.

83. For the sake of convenience in consulting the material to be published, Sub-Committee 1, when examining this question at the first part of the first session of the General Assembly, considered it desirable that both the instruments registered and those filed and recorded should be published in a single series. It also agreed that treaties and agreements should be published in the original language or languages, followed by a translation in English and French and that certified statements referred to in article 2 of the regulations should be published in the same manner as the treaties and agreements. These decisions found expression in article 12 (1) of the regulations.

84. Sub-Committee 1 further took cognizance of the fact that the translations required under article 12 of the regulations might impose a considerable burden on the Secretariat in cases in which the text of agreements was in a language other than one of the official languages of the United Nations. It was suggested that it would be helpful in that connexion if a government registering a treaty, the text of which was in a language other than one of the official languages, would submit a translation in at least one of the official languages; this would be of considerable assistance to the Secretariat in carrying out its responsibilities with respect to translations called for by the regulations.

85. Article 12 (2) of the regulations specifies the type of information to be included by the Secretariat when publishing a treaty or agreement in the United Nations Treaty Series. ^{88/} In this connexion, Sub-Committee 1 expressed the view that publication in the Treaty Series of any additional information voluntarily submitted by any State should be left to the discretion of the Secretariat.

86. The first volume of the United Nations Treaty Series, covering the registration period from 14 December 1946 to 31 March 1947, was published in October 1947 and served as a model for subsequent volumes. The volume was divided into two parts: part I reserved for the publication of treaties and international agreements registered, and part II reserved for the publication of treaties and international agreements filed and recorded. In addition, it comprised annexes A, B and C, the first two being devoted to certified statements and supplementary agreements registered, and filed and recorded, respectively, and the last being devoted to subsequent actions relating to treaties registered with the League of Nations.

87. The question of publication was taken up by the Sixth Committee at the second, third, fourth and fifth sessions of the General Assembly during the discussion of the

^{88/} To an inquiry on this subject from a Government, the Secretariat replied that no indication was given in the United Nations Treaty Series to the effect that a party or specialized agency registering an agreement had certified that its text included all reservations made by parties thereto since, according to article 5 of the regulations, such certification was obligatory and consequently no agreement was registered and published unless so certified.

reports of the Secretary-General on registration and publication of treaties and international agreements. In the discussions, interest centred upon the questions of the rate of publication and the accuracy of translations.

88. At its third session, 89/ the General Assembly adopted resolution 254 A (III), under which, having considered that the United Nations Charter required that treaties and international agreements should be not only registered but also published as soon as possible and having further considered that the practical value, for Governments, scientific institutions and all the circles concerned, of publishing treaties and international agreements also depended in large measure upon the degree of accuracy and precision of the published translations, the General Assembly instructed the Secretary-General to take all necessary steps to ensure that registered treaties or agreements should be published with the least possible delay and that the translations should reach the highest possible level of accuracy and precision.

89. While considerable progress with respect to the publication of treaties was noted, the need for acceleration was stressed 90/ again in the Sixth Committee at the fourth session of the General Assembly. In the course of the discussion on the subject, it was recalled that, when the same subject had been discussed at the third session of the General Assembly, there had been general agreement that treaties should be published with the least possible delay, and publication within six months after registration had been set as the target. Such an attitude, it was pointed out, was only logical because, if the publication of treaties were greatly delayed, they would be of no more than historical interest. It was also stressed that Article 102 had been written into the Charter with the intention of promoting open diplomacy, and, while certain financial difficulties existed, there could be no doubt that the desire to adhere to the principles contained in Article 102 must override budgetary considerations.

90. In its report 91/ on the registration and publication of treaties and international agreements to the General Assembly at its fourth session, the Sixth Committee pointed out that, in view of the statement by the Secretariat that certain economic difficulties might arise in maintaining the rate of publication, the Sixth Committee was of the opinion that the importance of the work and its continuation were matters of fundamental concern to the United Nations.

91. As a result, the Committee approved a draft resolution, 92/ annexed to its report, which was adopted by the General Assembly and became resolution 364 A (IV), by which the Secretary-General was requested to take all necessary measures to bring about the earliest possible publication of all registered treaties and agreements.

92. At the fifth session of the General Assembly, the Sixth Committee discussed 93/ the question of publication in connexion with the report 94/ of the Secretary-General which dealt with possible economies in the field of registration and publication of treaties and international agreements. With regard to publication, the report referred to the possible amending of article 12 of the regulations in such a way that the

89/ G A (III/1), 6th Com., 79th and 80th mtgs., pp. 148-165.

90/ G A (IV), 6th Com., 174th mtg., p. 209.

91/ G A (IV), Plen., Annexes, a.i. 53, p. 206, A/1100.

92/ G A (IV), 6th Com., 174th mtg., p. 210.

93/ G A (V), 6th Com., 246th mtg., p. 249.

94/ G A (V), Annexes, vol. II, a.i. 54, p. 1, A/1408.

United Nations Treaty Series would be published only in English and French, and to such further economy measures not requiring amendments in the regulations as omission from publication of certain types of annexes, dispensing with the publication in full of virtually identical texts all based on a standard model, printing of the Treaty Series abroad, reducing to a minimum the free issue of the Treaty Series and the using of lower quality of paper and smaller type of print.

93. While there was support for the adoption of some of the measures mentioned above, the view was also expressed that any economy measure should always be evaluated in the light of its ultimate effect upon the underlying purpose of Article 102 and not merely in the light of immediate budgetary considerations or present excessively heavy work-load. It was pointed out that international instruments now concluded would constitute an important source of material on current international relations for future reference. Such instruments became increasingly inaccessible shortly after their conclusion, and one of the purposes of registering and publishing them was precisely to ensure their availability in years to come. The texts should, therefore, be published in toto and in the original language, as well as in English and French translations.

94. There was general agreement, in particular with regard to the specific measures mentioned above, that the existing rule, contained in article 12, requiring the publication of treaties and agreements in the original language or languages, followed by a translation in English and French, should be maintained. ^{95/} It was felt that no translation could ever represent the exact equivalent of an original text, and it was recalled that the Advisory Committee on Administrative and Budgetary Questions, in its second report ^{96/} of 1950 to the General Assembly at its fifth session, had endorsed that view. Objection was raised to a suggestion made in the report of the Secretary-General and offered as a possible interpretation of Article 102, that the words "to publish" did not carry the implication of a requirement "to publish in its original form" but only to make public, to submit to general circulation, in a manner that would fulfil the underlying purpose of Article 102.

95. At the same time, the Sixth Committee endorsed the proposal of the Advisory Committee under which, instead of amending article 12 of the regulations, Members of the United Nations would be invited to submit, wherever possible, a translation in either English or French. This proposal was embodied in paragraph 2 of General Assembly resolution 482 (V) in the following terms:

"The General Assembly,

".....

"2. Invites Member and non-member States parties to treaties or international agreements subject to publication under article 12 of the regulations to give effect to Article 102 of the Charter of the United Nations, to provide the Secretary-General, where feasible, with translations in English or French or both as may be needed for the purposes of such publication".

^{95/} The report of the Secretary-General mentioned in connexion with this question that it was of interest to note that the International Law Commission, in its report to the General Assembly covering its second session, had stated that it "attaches special importance to the continuance of the present language system of the United Nations Treaty Series, i.e., reproduction of the original text with translation - as essential to the general usefulness of the Series". G A (V), Annexes, vol. II, a.i. 54, A/1403, para. 14.

^{96/} G A (V), Suppl. No. 7 (A/1312), para. 332.

96. In connexion with the consideration of the exclusion from publication of certain annexes as another possible measure of achieving economy in publication, the Secretary-General noted in his report that there were types of annexes to treaties and international agreements which, being in no way essential to an understanding of the main documents, might well be excluded from publication without any departure from the legal requirements of the regulations themselves. He added that that step would be taken only after consultation between the Secretariat and the registering parties, having regard to the importance of the particular annexes in relation to their bulk. An example 97/ of a case in which this procedure had actually been applied was cited in a memorandum submitted by the Secretary-General to the Advisory Committee which, in its report, stated that the procedure in question was "a method which has already produced satisfactory results". In addition, the Advisory Committee observed that, "since a condition precedent to registration is that the complete text of the instrument shall be submitted, the omission from the Treaty Series of a part or the whole of an annex to a treaty or agreement could not be construed as affecting the validity of the registration".

97. During the discussion 98/ of this matter in the Sixth Committee, the views set forth below were among those expressed. (1) An annex was normally an integral part of a treaty or agreement and often constituted the most important part of the whole text. (2) The omission from publication of annexes would defeat the underlying purpose of Article 102. (3) Such procedure, if adopted, might provide a loophole which would enable States to withhold vital details of a treaty from publication. (4) It was clear from the provisions both of Article 102 of the Charter and article 5 of the regulations, that a "true and complete" copy of the agreement should be published. Attention was also drawn to certain difficulties which might face the Secretary-General should a procedure be adopted whereby, with the consent of a registering party, he could refrain from publishing an annex to a treaty.

98. It was argued on the other hand that the omission from publication of annexes would not in any way enable States to evade the obligation to register the complete text of an agreement including annexes; the only purpose of that procedure would be to refrain from publishing detailed and non-essential annexes in the Treaty Series. The references to such annexes would remain in the text of the treaty and the annexes themselves would be available for inspection by any Government wishing to consult them.

99. The above-mentioned views were reiterated in connexion with the discussion in the Sixth Committee at the same session of a proposal by which the Secretary-General would

97/ United Nations Treaty Series, vol. 52, 1950, I. No. 768. The following footnote was provided by the Secretariat on page 211 of that volume in connexion with the omission from the publication of certain annexes: "By the consent of the registering party, the annexes to the Descriptive Protocol, 415 Protocols describing the frontier marks and an album of maps and triangulation diagrams, are not reproduced in the United Nations Treaty Series, these documents merely supplying technical frontier data, topographic sections and photographs of border points. A duly certified copy, however, of the complete text of the Agreement as described above has been transmitted by the registering party and remains in the custody of the Secretariat. Furthermore, it is understood that the registration covers the complete text of the Agreement as reproduced in the certified copy thereof and that the omission from publication of certain parts of the Agreement does not affect the validity of such registration".

98/ G A (V), 6th Com., 246th mtg., p. 249.

have been authorized to refrain from publishing in its entirety a treaty or agreement, the text of which was almost identical with the text of one which had already been published. 99/

100. As to such other economy measures as the possibility of using a lower quality of paper and smaller type of print, the view was expressed in the Committee that the estimated savings seemed small in proportion to the disadvantages when considered from a long-term point of view.

101. The conclusions of the discussion in the Sixth Committee found expression in a draft resolution, which was adopted by the General Assembly and became resolution 462 (V), the relevant paragraphs of which read as follows:

"The General Assembly,

".....

"5. Requests the Secretary-General, when acting under article 12 of the regulations to give effect to Article 102 of the Charter of the United Nations, to continue, as economically as practicable, without undue delay and without sacrifice of uniformity in style and record permanence, to publish all treaties and international agreements in their full and unabridged form, including all annexes, provided however that, in the reproduction of annexes, he may in his discretion employ less expensive methods of reproduction. [100/]

6. Requests the Secretary-General regularly to review the free mailing list with a view to its possible reduction."

99/ The proposed procedure had been used by the Secretariat in respect of several agreements which had been registered on the same date and the texts of which had all been based on a model text. (United Nations Treaty Series, vol. 65, 1950, I. Nos. 815-838, pp. 3 to 105.)

100/ An example of annexes reproduced in accordance with this resolution, is provided by the tariff schedules to the General Agreement on Tariffs and Trade (GATT) in the United Nations Treaty Series, vols. 56 to 60, 1950, I, No. 814 I. (b).