

ARTICLE 102

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ARTICLE 102

TEXT OF ARTICLE 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

INTRODUCTORY NOTE

1. The organization of the present study follows that of the corresponding study in the *Repertory*. Decisions or actions taken by United Nations organs during the period under review, which had a bearing on the interpretation of Article 102, are mentioned briefly in the General Survey and discussed in more detail in the Analytical Summary of Practice. The annex to the General Survey gives information about further developments in the practice regarding the application of the regulations¹ to give effect to Article 102, as well as the text of the regulations involved.

¹ G A resolution 97 (I) as amended by G A resolutions 364 B (IV) and 482 (V).

I. GENERAL SURVEY

2. During the period under review, the General Assembly itself did not take any decisions bearing on Article 102, and no significant discussion on the subject of registration and publication of treaties and international agreements took place in the Assembly.

3. Extensive discussion on that subject did take place, however, in the International Law Commission, a subsidiary organ of the General Assembly, during its work on the draft articles on the law of treaties. The International Law Commission included in the draft articles: (a) a definition of the term "treaty" (b) a general provision for the obligatory registration of treaties, and (c) a special provision concerning notification of corrections of errors in the authentic text or texts of a registered treaty.²

² See paras. 8-10, 14 and 15 below and note (g) to article 2 of the regulations in the annex to the General Survey.

4. The General Assembly has never laid down a precise definition of the term "treaty and international agreement", the matter having been left to gradual development through practice.³ Decisions of the Secretariat on whether certain agreements or categories of agreements were subject to registration were given in the *Repertory*.⁴ Further instances in the development of practice in that regard are given in the Analytical Summary of this study.⁵

³ See *Repertory*, vol. V, under Article 102, paras. 18-31; *Repertory Supplement No. 1*, vol. II, under Article 102, paras. 11-23; and *Repertory Supplement No. 2*, vol. III, under Article 102, paras. 4-8.

⁴ See *Repertory*, vol. V, under Article 102, para. 31.

⁵ See paras. 12 and 13 below.

5. The following table shows the number of treaties and international agreements registered, or filed and recorded, from 1 January 1960 to 31 December 1966:⁶

| Submitting party | Number of agreements | | |
|------------------------------------------|----------------------|--------------------|-------------------|
| | Registered | Filed and recorded | Total |
| Member States | 3606 | 3 | 3609 |
| Non-member States | 7 | — | 7 |
| Specialized agencies and IAEA | 727 | 31 | 758 |
| <i>Ex officio</i> registration | 470 | 41 | 511 |
| Intergovernmental organizations | 69 | — | 69 |
| Totals: | 4879 | 75 | 4954 ⁷ |

6. From 1 January 1960 to 31 December 1966 216 volumes of the United Nations *Treaty Series* were published, bringing to 534 the total number of volumes published as of 31 December 1966.

⁶ For data up to 31 December 1954, see *Repertory*, vol. V, under Article 102, para. 16; for data from 1 January 1955 to 31 December 1956, see *Repertory Supplement No. 1*, vol. II, under Article 102, para. 9; and for data from 1 January 1957 to 31 December 1959, see *Repertory Supplement No. 2*, vol. III, under Article 102, para. 2.

⁷ This brought to 12,435 the number of treaties registered or filed and recorded from December 1946, when effective registration and filing and recording started, up to 31 December 1966

ANNEX

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

Part one

REGISTRATION

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.

Notes

(a) It has been the understanding of the Secretariat that the requirement of registration by means of a certified statement of any subsequent action effecting a change in the status of a registered treaty, provided for in article 2 of the regulations, relates to such actions as additional ratifications, accessions and other international acts whereby a State establishes on the international plane its consent to be bound by a treaty. That requirement has also been taken to apply to prolongations, extensions to territories, denunciations and abrogations, but not to changes in a treaty's terms, scope or application, such changes being effected by a new agreement, in which case the agreement itself is subject to registration under article 1 of the regulations. That understanding was expressed by the Secretary-General's representative in the Sixth Committee at the second session of the General Assembly, when he introduced the Secretary-General's report on the registration and publication of treaties.⁸ It was endorsed by the Sixth Committee in its reports⁹ to the General Assembly at its second and third sessions. With regard to the registration of subsequent actions, it was stated in those reports that while a simple statement would be sufficient when there was a change in the parties to a registered treaty, on the other hand, when the scope or application of a treaty was modified, the actual instrument, for example, the exchange of notes or additional protocol which brought about the modification in question, would have to be registered.¹⁰

(b) The Secretariat has, however, accepted certified statements for registration, even though the subsequent action involved was brought about by a new agreement, because the latter merely related to the prolongation or termination of a treaty, to a minor

modification of its text or an annex thereto, or to the implementation of a provision of a treaty. Furthermore, even though on numerous occasions the agreements themselves by which such actions were effected were transmitted for registration, the Secretariat, in consultation, where appropriate, with the registering party, effected their registration in the form of a certified statement. A similar practice was followed in respect of subsequent actions relating to treaties registered *ex officio*. Whenever a certified statement is so registered,¹¹ all essential information relating to the subsequent action concerned, including

¹¹ The following references are given as examples from among the numerous instances of the practice:

- (a) Extensions without change of terms: United Nations, *Treaty Series* vol. 349 (1960), No. 851, p. 319, and No. 2159, p. 325; vol. 505 (1964), No. 5786, p. 322; vol. 529 (1965), No. 7218, p. 376; vol. 552 (1966), No. 7866, p. 431; vol. 553 (1966), No. 3172, p. 348; vol. 565 (1966), No. 5783, p. 318; vol. 573 (1966), No. 2908, p. 306.
- (b) Terminations: *ibid.*, vol. 533 (1965), No. 460, p. 404; vol. 537 (1965), No. 2826, p. 376.
- (c) Minor modifications of registered treaty texts or annexes thereto: *ibid.*, vol. 353 (1960), No. 520, p. 376; No. 551, p. 316, and No. 681, p. 325; vol. 354 (1960), No. 4974, p. 446; vol. 356 (1960), No. 2255, p. 365; vol. 431 (1962), No. 3221, p. 304; vol. 463 (1963), No. 270, p. 314; vol. 482 (1963), No. 3221, p. 372; vol. 496 (1964), No. 1318, p. 340, and No. 1325, p. 344; vol. 562 (1966), No. 5680, p. 332; vol. 563 (1966), No. 780, p. 356; vol. 573 (1966), No. 8223, p. 359; vol. 579 (1966), No. 5302, p. 263, and No. 6141, p. 272.
- (d) Technical or administrative arrangements designed to implement certain treaty provisions: *ibid.*, vol. 472 (1963), No. 497, p. 386; vol. 502 (1964), No. 497, p. 362; vol. 521 (1964), No. 497, p. 374, and No. 7071, p. 402; vol. 566 (1966), No. 7071, p. 372; vol. 578 (1966), No. 8291, p. 282; vol. 592 (1967), No. 8291, p. 282. See also the recommendation by the First Committee of the Second Assembly of the League of Nations to the effect that Article 18 of the Covenant be amended to provide that instruments of a "purely technical or administrative nature which have no bearing on international political relations" or those which "consist merely of technical regulations defining, without in any way modifying, an instrument already registered, or which are only designed to enable such an instrument to be carried into effect" need not be submitted for registration; for such instruments, a summary statement would suffice (Records of the Second Assembly of the League of Nations, Meetings of the Committees, I, p. 195; Plenary Meetings, p. 700).
- (e) Territorial extensions: *ibid.*, vol. 573 (1966), No. 7952, p. 356, and No. 7953, p. 356.
- (f) Extension of scope: *ibid.*, vol. 349 (1960), No. 160, p. 303, and No. 1164, p. 323.
- (g) Interpretative understanding: *ibid.*, vol. 574 (1966), No. 2403, p. 230.

⁸ G A (II), 6th Com., 54th mtg., p. 112.

⁹ G A (II), Plen., vol. II, p. 1564, annex 19 and G A (III/1), Plen., Annexes, p. 300, A/698. See also G A (III/1), Plen., Annexes, p. 61, A/613.

¹⁰ See *Repertory*, vol. V, under Article 102, note (c) to article 2 of the regulations in the annex to the General Survey.

the pertinent parts of the agreement itself, is published in the United Nations *Treaty Series*. That procedure fully satisfies the requirements of the regulations, and at the same time permits considerable economies, for otherwise the integral text of all such agreements would have to be published in all the languages in which they were concluded followed by English and French translations.

(c) During the period covered by this *Supplement*, approximately 3,445 certified statements were registered, of which by far the largest number related to subsequent actions effecting a change in the parties to a treaty, that is, signatures without reservation as to ratification, approval or acceptance (definitive signatures), ratifications, acceptances, approvals, accessions, notifications of succession and denunciations. Signatures given subject to ratification, approval or acceptance, or signatures affixed to a treaty which by its provisions are subject to ratification, acceptance or approval, are not considered as falling within the meaning of subsequent action requiring registration, since they do not effect a change in the parties. When affixed to a treaty before its registration, they are, of course, published in the *Treaty Series*, together with the text, since the signature pages form part of the treaty. When affixed after registration, the information is published in the *Treaty Series* as part of a certified statement relating to the deposit by the signatory States of an act establishing their consent to be bound by the treaty concerned.

(d) A particular question involving the interpretation of the term "subsequent action" in article 2 arose in connexion with the registration of amendments to multilateral treaties embodying the constitution of an international organization. For the most part such treaties provide that amendments shall enter into force for all members of the organization when ratified or accepted by a given majority, which is usually two thirds of the members and sometimes includes specified members. A Government acting as depositary of such a treaty asked the Secretariat whether it should continue to register statements relating to acceptances of amendments deposited after the entry into force of those amendments for all members of the organization concerned, and which, consequently, could be considered as having no legal effect. The Secretariat replied that, although such acceptances did not seem to fall within the meaning of "subsequent action" as defined in article 2 of the regulations, since they did not effect any change in the parties to a treaty or its terms, scope or application all members of the organization having already become bound by the amendments it nevertheless continued to register such acceptances deposited with the Secretary-General or submitted for registration by the depositaries of similar, treaties, in order to maintain a complete record.

(e) Errors and inconsistencies sometimes occur in the authentic text or texts of treaties, and a practice has been established for their correction when there is no dispute as to their existence. The methods of correction differ according to whether a bilateral or multilateral treaty is involved and, in the latter case, whether there is, or is not, a depositary. As regards a bilateral treaty or a multilateral treaty for which there is no depositary, the method of correction to be adopted is essentially a matter for the States in question. The method usually followed is to have the appropriate correction made in the text and cause it to be initialled by duly authorized representatives, or to execute or exchange a separate instrument or instruments setting out the agreed correction. When the treaty involved is a multilateral treaty for which there is a depositary, the correction procedure generally followed is for the depositary to notify all the interested States of the error or inconsistency and of the proposal to correct the text, and to specify a time-limit within any objection must be submitted. If no objection is raised, the depositary proceeds to make and initial the correction in the authentic text or texts, draw up a *procès-verbal* recording the fact and communicate a copy of it to the States concerned.¹²

(f) It has been the practice of the Secretariat to treat corrections, executed after the registration of a treaty, as subsequent actions under article 2 of the regulations and to register them accordingly. The corrections and related information or, where appropriate, the text of the instrument or instruments setting out the corrections, are published in the *Treaty Series* according to the chronological order of registration.¹³ In cases where corrections have been made to treaties registered *ex officio* prior to the publication of the text of the treaty concerned, the corrected text is published in the *Treaty Series*, thus eliminating the need for separate publication of the corrections. In cases where corrections have been registered by a party or specialized agency prior to publication of the text of the treaty, a foot-note has been given in the *Treaty Series* volume in which the text of the treaty is reproduced, indicating where corrections were made and giving particulars of their registration.¹⁴ When an error is discovered in the text of an agreement at the time of its registration and corrected in consultation with the registering party, the text incorporating the correction is published in the *Treaty Series*, without the correction itself being registered.

(g) A special provision that the United Nations Secretariat should be notified of the correction of errors in the authentic text or texts of treaties registered with it was adopted by the International Law Commission in 1966 in draft article 74, paragraph 4, on the law of treaties. That paragraph provided as follows:

"4 (a) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide;

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations."¹⁵

The commentary¹⁶ adopted by the Commission stated that the registration of such corrections "would clearly be in accordance with the spirit of article 2 of the General Assembly's Regulations concerning the Registration and Publication of Treaties and International Agreements, and appeared to the Commission to be desirable".

(h) Article 1 (2) of the regulations lays down the rule that registration cannot take place prior to the entry into force of the treaty or international agreement. However, under an early interpretation given to the term "entry into force" by the Sixth Committee for the purpose of that rule, "a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto".¹⁷ In a number of cases to which that interpretation applies, the registration of a treaty or agreement was effected prior to its definitive entry into force.

multilateral treaties in respect of which he exercises depositary functions, see "Summary of the practice of the Secretary-General as depositary of multilateral agreements" (ST/LEG/7), mimeographed, pp. 8-10, 12, 19, 20 and 39 (foot-note 26), and annexes 1 and 2. The International Law Commission's draft articles on the law of treaties contain a provision (draft article 74, para. 2. of the final draft articles adopted at the Commission's eighteenth session) concerning the correction of errors in authentic texts of treaties, which closely follows the Secretary-General's practice in the matter (see G A (XXI), Suppl. No. 9, pp. 98 and 99; and para. (4) of the commentary to draft article 74).

¹³ See, for example, United Nations, *Treaty Series*, vol. 351 (1960), No. 4646, p. 448; vol. 450 (1963), No. 4706, p. 448; vol. 515 (1964), No. 6791, p. 322; vol. 516 (1964), No. 4789, p. 378; vol. 557 (1966), No. 4789, p. 274; vol. 570 (1966), No. 7515, p. 346; vol. 577 (1966), No. 7441, p. 334; vol. 590 (1967), No. 7515, p. 325; vol. 608 (1967), No. 8303, p. 380.

¹⁴ *Ibid.*, vol. 514 (1964), No. 7445, p. 158 (foot-note 2); vol. 540 (1965), No. 7445, p. 342; vol. 524 (1965), No. 7579, p. 282 (foot-note 2); vol. 540 (1965), No. 7579, p. 350; vol. 525 (1965), No. 7588, p. 166 (foot-note 2); vol. 538 (1965), No. 7588, p. 346; vol. 569 (1966), No. 5534, p. 277 (foot-note 1) and p. 287 (foot-note 1); vol. 584 (1966), No. 5534, p. 258.

¹⁵ G A (XXI), Suppl. No. 9, p. 99.

¹⁶ *Ibid.*, p. 100, paragraph (8) of commentary to draft article 74.

¹⁷ See *Repertory*, vol. V, under Article 102, paras. 32-34.

¹² For the practice followed by the Secretary-General with regard to the correction of errors in the authentic text or texts of

(i) Notifications by the parties or specialized agencies of the definitive entry into force of treaties registered before that time clearly fall within the meaning of subsequent actions requiring registration as certified statements under article 2 of the regulations and have been registered by the Secretariat as such.¹⁸ As regards treaties and agreements for which the Secretary-General acts as depositary or to which the United Nations is a party, and which have been registered on provisional entry into force, the Secretariat *ex officio* registers their definitive entry into force on the date on which the conditions for bringing them definitively into force have been fulfilled.¹⁹

(j) A treaty or agreement, even though it contains provisions for provisional application, is often registered only after the definitive entry into force. In such instances, if the registering party or specialized agency specifies the dates of the provisional entry and the definitive entry into force, both dates are recorded in the register. When no reference is made to the provisional entry into force, only the definitive date is recorded and no information about the former is requested by the Secretariat. On the other hand, if only the provisional date of entry into force is given and it appears that the treaty has already entered into force definitively, the Secretariat solicits the required data from the registering party or specialized agency.

(k) When a registered treaty is terminated, its termination is also subject to registration under article 2 of the regulations. The registration is effected by the Secretariat *ex officio* when the treaty itself was registered *ex officio*,²⁰ or on receipt of a certified statement from the party or specialized agency concerned giving the method and effective date of termination.²¹ A certified copy of the instrument, for example, exchange of notes or protocol, by which the parties agreed to terminate the registered treaty is sometimes transmitted to the Secretariat for that purpose.

(l) The question whether the submission of a certified statement concerning termination was necessary when a treaty had been terminated pursuant to a provision in a new treaty which was being registered, was raised by one Government. It was suggested that in such cases the Secretariat could proceed automatically with the registration of the termination on the basis that the registering party had certified the text of the new treaty which included the termination provision. The Secretariat took the position that under the regulations it could not substitute itself for the registering party since registration is effected by the act of one of the parties and not by any action of the Secretariat. However, if the registering party made a reference to the termination provision and specified its effective date in the statement certifying the new treaty, or in the transmittal letter, that would enable the Secretariat to proceed with the registration of the termination.

(m) In actual practice, when the Secretariat notices that a treaty submitted for registration provides for the termination of a previously registered, treaty, it draws the attention of the registering party to the requirement of article 2 of the regulations and solicits the registration of its termination.

Article 5²²

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

¹⁸ See, for example, United Nations, *Treaty Series*, vol. 552 (1966), No. 7750, p. 423.

¹⁹ See, for example, *ibid.*, vol. 426 (1962), No. 5309, p. 348; and vol. 486 (1964), No. 6520, p. 434.

²⁰ See, for example, *ibid.*, vol. 603 (1967), No. 4814, p. 327.

²¹ See, for example, *ibid.*, vol. 431 (1962), No. 3831, p. 310; vol. 496 (1964), No. 3623, p. 368; vol. 603 (1967), No. 4538, p. 326, and No. 6148, p. 336.

²² See notes to articles 8 below.

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).

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.

Notes

(a) In accordance with article 6 of the regulations, the registration of a treaty transmitted by a party or specialized agency is effected on the date of its receipt by the Secretariat, subject, however, to the provision of article 1 (2) of the regulations according to which registration cannot take place until the treaty has entered into force. Thus, when a treaty is received for registration prior to the date on which, under its provisions, it enters into force, the Secretariat informs the registering party that it will retain the documentation and proceed with registration on the date of entry into force. In respect of a multilateral treaty, the Secretariat in addition requests the registering party to inform it, immediately after the treaty's entry into force, of any changes which may have occurred regarding its status since the date of its submission to the Secretariat, so that all pertinent information as at the date of registration of the treaty can be inscribed in the register.

(b) In regard to treaties for which the Secretary-General acts as depositary or to which the United Nations is a party, the Secretariat follows the rule contained in article 6 of the regulations according to which the date of registration *ex officio* is the date on which the treaty first came into force. On several occasions, however, a treaty concluded outside the Headquarters of the United Nations has not reached the Secretariat in time for inclusion in a particular monthly issue of *Statement of Treaties and International Agreements Registered or Filed and Recorded with the Secretariat*, and has been registered on the nearest possible date thereafter.

(c) In some instances, the registration *ex officio* of a multilateral treaty containing no provisions regarding reservations has been deferred in accordance with the Secretary-General's depositary practice in relation to reservations. Under that practice, when the requisite number of instruments of ratification or accession to bring the treaty into force have been deposited, but some are accompanied by reservations to which one or more of the ratifying or acceding States have objected, or in respect of which the customary ninety-day period from the date of circulation allowing States to enter objections has not expired, the Secretary-General does not announce the date of entry into force of the treaty. He merely informs the States concerned that he has received the requisite number of instruments, reserving and objecting States included, and calls their attention to the entry into force provision of the treaty. If within ninety days from the date of his communication no objections have been raised to the entry into force of the treaty the Secretary-General proceeds with its registration at the end of the ninety-day period, specifying the date of entry into force pursuant to the relevant provision of the treaty.²³ That practice²⁴ developed as a result of General

²³ See *Yearbook of the International Law Commission, 1965*, vol. II, pp. 74-107, and in particular p. 103, paras. 31-33. See also this *Supplement* under Article 98.

²⁴ See, for example, United Nations, *Treaty Series*, vol. 450 (1963), No. 6465, p. 11; vol. 500 (1964), No. 7310, p. 95; vol. 516 (1964), No. 7477, p. 205; vol. 521 (1964), No. 7525, p. 231.

Assembly resolutions 598 (VI) and 1452 B (XIV) on reservations to multilateral treaties.²⁵ In those resolutions the Secretary-General was requested, in respect of treaties which contained no provisions to the contrary, to continue to act as depositary for documents containing reservations or objections, without passing upon the legal effect of such documents, and to communicate the text of those documents to all States concerned, leaving it to each State to draw legal consequences from the communications.

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:
 - ...
 - (d) The dates of signature, ratification or acceptance, exchange of ratification, accession, and entry into force;
 - ...
2. Such information shall also be included in the register in regard to the statements registered under article 2 of these regulations.
 - ...

Notes

(a) Not infrequently treaties provide for a time-lag between the establishment by contracting States of consent to be bound by a treaty and its entry into force. For instance, provision may be made for a thirty-day interval between the signature or exchange of instruments of ratification, acceptance, or approval, or in the case of multilateral treaties, the deposit of the required number of such instruments, and the date of entry into force. In the latter instance, when instruments are deposited after the deposit of the last instrument required for bringing the treaty into force, a similar interval is usually provided for before they become effective.

²⁵ For a memorandum prepared by the Secretariat on General Assembly resolutions concerning the law of treaties, see *Yearbook of the International Law Commission, 1963*, vol. II; and in relation to resolutions 598 (VI) and 1452 B (XIV) in particular, *ibid.*, pp. 22-28.

(b) When a registering party indicates only the date or dates of one of the two stages of participation in a treaty providing for such a time-lag, the Secretariat feels obliged to request that party for the data regarding the other stage. That information is required under article 8 (1) of the regulations in which it is stipulated that, in respect of each treaty or international agreement, the register shall comprise, *inter alia*, a record of the dates of signature, ratification or acceptance, exchange of ratifications, accession, and entry into force. Furthermore, when only the date of completion of the first stage is indicated, the Secretariat does not consider it appropriate to determine the date of entry into force of the treaty by itself computing the time-lag involved.

(c) The same information is required under paragraph 2 of article 8 for the registration of certified statements relating to subsequent actions in respect of treaties providing for the above-mentioned time-lag, and the Secretariat follows the same practice with respect to their registration.

Part Two

FILING AND RECORDING

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;
 - ...

Note

In practice, subparagraph (a) of article 10 of the regulations has also been applied to international agreements²⁶ entered into by the International Atomic Energy Agency, on the basis of its special relationship²⁷ with the United Nations.

²⁶ See United Nations, *Treaty Series*, vol. 396 (1961), No. 584, p. 255, No. 585, p. 273, and No. 586, p. 285; vol. 490 (1964), No. 584, p. 483; vol. 501 (1964), No. 606, p. 285.

²⁷ See United Nations, *Treaty Series* vol. 281 (1957), No. 548, p. 369.

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"

7. The question of the interpretation of the term "treaty and international agreement" was dealt with at some length in previous studies²⁸ in the *Repertory* and its *Supplements Nos. 1 and 2*. Those studies indicated that although the General Assembly, in considering the implementation of Article 102, had made attempts at various stages to clarify the exact meaning of the term it had not laid down a precise definition but had left the matter to gradual development through practice.

²⁸ *Repertory*, vol. V, under Article 102, paras. 18-31; *Repertory Supplement No. 1*, vol. II, under Article 102, paras. 11-23; *Repertory Supplement, No. 2*, vol. III, under Article 102, paras. 4-8.

8. The International Law Commission, in the draft articles on the law of treaties adopted at its eighteenth session in 1966, included a provision in draft article 2 on the use of terms, which stated that for the purposes of those articles:

"(a) 'Treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."²⁹

9. In the commentary³⁰ adopted by the Commission it was stated that article 2 was "intended only to state the meanings with which terms are used in the draft articles". It was further explained that the expression "concluded between States" was "not in any way intended to deny that other subjects of international

²⁹ *Yearbook of the International Law Commission, 1966*, vol. II, p. 187.

³⁰ *Ibid.*, pp. 188 and 189.

law, such as international organizations and insurgent communities, may conclude treaties”, and that the restriction to international agreements in writing was “not intended to deny the legal force of oral agreements under international law or to imply that some of the principles contained in later parts of the Commission’s draft articles on the law of treaties may not have relevance in regard to oral agreements”.³¹ It was also mentioned in the commentary that the phrase “governed by international law” “serves to distinguish between international agreements regulated by public international law and those which, although concluded between States, are regulated by the national law of one of the parties (or by some other national law system chosen by the parties)”.³²

10. It was noted in paragraph (2) of the commentary that the term “treaty” was used throughout the draft articles in a generic sense, covering all forms of international agreement in writing concluded between States:

“Although the term ‘treaty’ in one sense connotes only the single formal instrument, there also exist international agreements, such as exchanges of notes, which are not a single formal instrument, and yet are certainly agreements to which the law of treaties applies. Similarly, very many single instruments in daily use, such as an ‘agreed minute’ or a ‘memorandum of understanding’, could not appropriately be called *formal* instruments, but they are undoubtedly international agreements subject to the law of treaties. A general convention on the law of treaties must cover all such agreements,³³ and the question whether, for the purpose of describing them, the expression ‘treaties’ should be employed rather than ‘international agreements’ is a question of terminology rather than of substance. In the opinion of the Commission a number of considerations³⁴ point strongly in favour of using the term ‘treaty’ for this purpose.”

11. One of the subjects discussed in the *Repertory* in connexion with the interpretation of the term “treaty

³¹ *Ibid.*, pp. 187-191, paras. (5) and (7) of the commentary to draft article 2; see also draft articles 1 and 3 and commentaries thereto.

³² *Ibid.*, para. (6) of commentary to draft article 2. When the meaning of the term “international agreement” was discussed in the Sixth Committee at the second session of the General Assembly, it was suggested that agreements between Governments relating to “a transaction of the same character as that which could be concluded by private persons or companies, and [which] was governed by private international law and municipal law rather than by public international law” should be excluded from the application of Article 102 (see *Repertory*, vol. V, under Article 102, para. 22).

³³ In the discussion of the term “treaty and international agreement” in Article 102, in the Sixth Committee at the second session of the General Assembly, attention was called to the fact that many of the international agreements concluded were of a financial, commercial or technical character, but, it was stated, 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 or descriptive name”. Thus, an exchange of notes or letters, a protocol, and accord, even a unilateral engagement accepted by the other party, were all to be registered (see *Repertory*, vol. V, under Article 102, para. 22).

³⁴ See *Yearbook of the International Law Commission, 1966*, vol. II, p. 188, paras. (3) and (4) of commentary to draft article 2.

and international agreement” was the registration of unilateral undertakings or engagements of an international character as international agreements.³⁵ During the period under review, one specialized agency registered several letters addressed to it by a member Government, each letter containing an undertaking by that Government relating to the assistance to be supplied by it in carrying out the terms of certain agreements which the specialized agency had concluded with the Governments of dependent territories. Those letters were certified by the specialized agency as each constituting an international agreement between the agency and the member Government.³⁶

12. Amendments to Articles 23, 27 and 61 of the Charter of the United Nations, adopted by General Assembly resolutions 1991 A and B (XVIII) of 17 December 1963, were considered by the Secretariat as constituting an agreement which should be registered.³⁷

13. Supplementary agreements to basic agreements on technical assistance, such as project agreements, plans of operations and similar *ad hoc* arrangements, concluded within the framework of the United Nations technical assistance programme, were considered by the Secretariat as not subject to registration, after consultations with the specialized agencies concerned, on the ground that they served the purpose of administrative arrangements and, consequently, need not be treated as fully fledged international agreements.

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

2. OBLIGATION TO REGISTER

a. *Registration by Member States*

b. *Registration by non-member States*

14. The International Law Commission’s draft article 75 on the law of treaties, dealt with the registration and publication of treaties and provided as follows:

“Treaties entered into by parties to the present articles shall as soon as possible be registered with

³⁵ See *Repertory*, vol. V, under Article 102, paras. 24, 26 and 47-49; *Repertory Supplement No. 2*, vol. III, under Article 102, paras. 5-8, and United Nations, *Treaty Series*, vol. 265 (1957), No. 3821, p. 299.

³⁶ United Nations, *Treaty Series*, vol. 466 (1963), No. 6753, p. 331; vol. 535 (1965), No. 7781, p. 205; vol. 567 (1966), No. 8257, p. 207.

³⁷ United Nations, *Treaty Series*, vol. 557 (1966), No. 8132, p. 143. For subsequent ratifications, see vol. 575 (1966), No. 8132, p. 323, and vol. 580 (1966), No. 8132, p. 321. In a memorandum prepared by the Secretariat it was pointed out, *inter alia*, that:

- (i) Declarations of new Members accepting the obligations of the Charter are registered as separate agreements;
- (ii) Declarations accepting the jurisdiction of the International Court of Justice are likewise registered;
- (iii) The Secretariat of the League of Nations registered amendments to the Covenant even though the Covenant itself had not been registered;
- (iv) Amendments to the Constitution of the International Labour Organisation have been registered although the original Constitution was not registered with the League of Nations.”

The Secretariat therefore expressed the opinion that the weight of argument and precedent would be in favour of registration of the amendments (*United Nations Juridical Yearbook 1966*, p. 261). See also this *Supplement*, under Articles 108 and 109.

the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.”³⁸

15. In the commentary,³⁹ on that article it was pointed out that the obligation to register treaties under Article 102 was limited to Member States, and that the Commission considered it would be appropriate “that all States becoming parties to a convention on the law of treaties should undertake a positive obligation to register their treaties with the Secretariat of the United Nations . . . so as to make the central system of registration with the United Nations as complete as possible”. It was further explained that the term “registration” was used in a general sense to cover both registration and filing and recording. Finally, it was stated in the commentary that:

“The Commission hesitated to propose that the sanction applicable under Article 102 of the Charter should also be specifically applied to non-members. But since it is a matter which touches the procedures of organs of the United Nations it thought that breach of such an obligation accepted by non-members in a general Convention could logically be regarded in practice as attracting that sanction.”

****c. Ex officio registration by the United Nations**

****d. Registration by specialized agencies**

****e. Time-limit for registration**

f. Effect of registration

16. In cases where the Secretariat receives for registration an agreement previously registered by another party or, pursuant to article 4 (2) of the regulations, by a specialized agency, it informs the party concerned that the agreement has already been registered, indicating the particulars of its registration.⁴⁰ It also compares the documentation submitted by the second party with that provided by the original registrant and calls the attention of the parties to any discrepancies noted. Corrections resulting from consultations with the parties are recorded in the register and published in the *Treaty Series*.

³⁸ *Yearbook of the International Law Commission, 1966*, vol. II, p. 273.

³⁹ *Ibid.*, pp. 273 and 274.

⁴⁰ See *Repertory*, vol. V, under Article 102, paras. 62-65.

17. During the period under review it was observed that the text of a bilateral agreement submitted for registration by one of the parties was identical to that previously registered by the other party, save for minor drafting discrepancies and the names of signatories, a circumstance explainable by the fact that the agreement had been drawn up and signed simultaneously in two capitals. The Secretariat concluded that the two versions actually constituted one agreement, but the party wishing to have its copy registered, having been informed accordingly, renewed its request for registration of its copy. The Secretariat pointed out that a double registration of the agreement would be contrary to the provision of article 3 of the regulations and the practice followed thereunder.⁴¹ It proposed, in accordance with that practice, that a note should be included in the *Treaty Series*, with the text of the agreement already registered. The note would indicate that one of the original copies of the agreement had been signed on the same date in the capital of the other party and would specify the names of the plenipotentiaries who had signed it. It further suggested that, should the Government so wish, certain discrepancies of a purely drafting nature between the two texts could also be indicated in the note. Both parties eventually agreed to that procedure.⁴²

18. In a few cases where an agreement already registered was received by the Secretariat for a second time and inadvertently inscribed in the register, the second inscription was cancelled and the parties concerned were informed accordingly.

****3. REGISTERING PARTIES**

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

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

⁴¹ See also Memorandum on the Registration and Publication of Treaties under Article 18 of the Covenant of the League of Nations, paragraph 8 (League of Nations, *Treaty Series*, vol. I, p. 11).

⁴² See United Nations, *Treaty Series*, vol. 548 (1965), No. 7983, p. 277. The letter containing the Secretariat's suggestions was published in *United Nations Juridical Yearbook 1966*, pp. 261 and 262.

