

# ARTICLE 102

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# ARTICLE 102

## TEXT OF ARTICLE 102

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

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

## INTRODUCTORY NOTE

1. The organization of the present study follows that of the corresponding study in volume V of the *Repertory*. Decisions or actions taken by United Nations organs during the period under review are mentioned briefly in the general survey and discussed in more detail in the analytical summary of practice. Those headings and sub-headings in the analytical summary of practice that do not call for comments on account of the lack of new material have been identified by two asterisks.

## I. GENERAL SURVEY

2. During the period under review, the General Assembly had no occasion to take new decisions concerning the application of Article 102 or of the regulations relating thereto<sup>1</sup> and there were few developments in the practice followed by the Secretariat.

3. However, the United Nations Conference on the Law of Treaties, convened pursuant to General Assembly decisions, adopted on 23 May 1969 the Vienna Convention on the Law of Treaties,<sup>2</sup> which is based on draft articles prepared by the International Law Commission and contains with regard to registration and publication the following provisions, concordant with Article 102 of the Charter:

### “Article 77

#### “FUNCTIONS OF DEPOSITARIES

“1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

“ . . .

“(g) registering the treaty with the Secretariat of the United Nations.”

### “Article 79

#### “CORRECTION OF ERRORS IN TEXTS OR IN CERTIFIED COPIES OF TREATIES

“ . . .

“5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.”

<sup>1</sup>G A resolution 97(I), as amended by G A resolutions 364 B (IV) and 482(V).

<sup>2</sup>A/CONF.39/27 and Corr.1. The Convention was adopted as a result of two sessions of the Conference that were held in Vienna from 26 March to 24 May 1968 and from 9 April to 22 May 1969. Concerning the draft articles of the International Law Commission, see *Repertory, Supplement No. 3*, vol. IV, under Article 102, paras. 3, 8-10, 14 and 15 and note (g) to article 2 of the regulations in the annex to the general survey.

### “Article 80

#### “REGISTRATION AND PUBLICATION OF TREATIES

“1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

“2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.”

4. In so far as the above-quoted provisions bear on practice under Article 102 of the Charter, they are dealt with in the following summary,<sup>3</sup> which gives an account of those significant developments that occurred during the period under review.

5. The following table shows the number of treaties and international agreements registered or filed and recorded, from 1 January 1967 to 31 December 1969:<sup>4</sup>

Submitting authority	Number of treaties and international agreements		
	Registered	Filed and recorded	Total
Member States . . . . .	1 538	1	1 539
Non-member States . . . . .	11	0	11
United Nations (registration <i>ex officio</i> ) . . . . .	139	7	146
Specialized agencies and IAEA . . . . .	281	12	293
Other intergovernmental organizations . . . . .	77	2	79
TOTAL	2 046	22	2 068 <sup>5</sup>

6. From 1 January 1967 to 31 December 1969, 80 volumes of the United Nations *Treaty Series* were published, bringing to 616 the total number of volumes published as of 31 December 1969.<sup>6</sup>

<sup>3</sup>See paras. 7 and 9 below.

<sup>4</sup>For data up to 1 January 1967, see *Repertory*, vol. V, under Article 102, para. 16; *Repertory, Supplement No. 1*, vol. II, under Article 102, para. 9; *Repertory, Supplement No. 2*, vol. III, under Article 102, para. 2; and *Repertory, Supplement No. 3*, vol. IV, para. 5.

<sup>5</sup>This brought to 14 503 the number of treaties and international agreements registered or filed and recorded from December 1946, when effective registration and filing and recording started, up to 31 December 1969.

## 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. It will be recalled that 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.<sup>7</sup> It is noteworthy in this regard that, in accordance with article 2 (1) (a) of the Vienna Convention on the Law of Treaties and for the purposes thereof, the term "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". As pointed out by the International Law Commission in paragraph 2 of its commentary on article 2 of the draft articles on the law of treaties,<sup>8</sup> the term treaty in one sense connotes only the single formal instrument as opposed to less formal instruments, including multiple instruments such as exchanges of notes. However, the existence of semantic variations from one legal system to another has been provided for by paragraph 2 of article 2 of the Convention, which is based on the corresponding text proposed by the International Law Commission in its draft articles,<sup>9</sup> and article 1 of the General Assembly regulations, of course, makes the latter applicable to every treaty or international agreement concluded by a Member State following the entry into force of the charter, whatever its form and descriptive name.

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

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

#### 3. REGISTERING AUTHORITIES<sup>10</sup>

8. During the period under review, the Government of a Member State submitted for registration a trilateral agreement to which it was a party together with one of the agencies referred to in article 4 (2) (b) of the regulations adopted by the General Assembly.<sup>11</sup> This agency, having subsequently submitted the same agreement, drew the attention of the Secretariat to the fact that the agreement had been registered with the agency under a

<sup>6</sup>For data concerning publication during periods up to 1 January 1967, see figures in the *Repertory* immediately after those concerning the number of agreements registered or filed and recorded as indicated in footnote 4.

<sup>7</sup>See *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; and *Repertory, Supplement No. 3*, vol. IV, under Article 102, paras. 7-8.

<sup>8</sup>See *United Nations Conference on the Law of Treaties, Official Documents, Documents of the Conference (A/CONF.39/11/Add.2)*, p. 8, and *Repertory, Supplement No. 3*, vol. IV, under Article 102, paras. 7-10.

<sup>9</sup>This paragraph reads as follows: "The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meaning which may be given to them in the internal law of any State".

<sup>10</sup>Previously dealt with in the *Repertory* under the title "Registering parties".

<sup>11</sup>Under that provision a treaty or international agreement may be registered with the Secretariat by a specialized agency (or by IAEA) when it has been registered with the agency pursuant to the terms of its constituent instrument.

procedure of its own, and that the relevant regulation of the agency charged it with effecting registration under Article 102 of the Charter. The Secretariat replied that registration under Article 102 is effected with the Secretariat by one of the parties and not by the Secretariat itself, for which reason the Secretariat could not, on the basis of rules contained in regulations external to the United Nations, decline registration of an agreement falling within the scope of application of that Article submitted to it for that purpose by a party. However, the Government concerned, having been consulted by the Secretariat, agreed to withdraw its request for registration so that the agreement could be registered by the agency.<sup>12</sup>

9. Under paragraph 3 of article 1 of the General Assembly regulations, registration "may be effected by any party or in accordance with article 4 of these regulations" (which provides, in certain cases, for *ex officio* registration by the United Nations and registration by a specialized agency). In keeping with a long-established practice, the Secretariat has continued, during the period under review, to accept for registration agreements submitted by intergovernmental organizations which, in their capacity as depositary of the agreements, had been expressly authorized therein to effect registration, on the ground that submission by such organizations was tantamount to submission by the parties themselves.<sup>13</sup> It should be noted in this regard that under paragraph 2 of article 80 of the Vienna Convention on the Law of Treaties<sup>14</sup> the designation of a depositary constitutes authorization for it to submit the agreement for registration.

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

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

10. On several occasions during the period under review, the Secretariat has had to cope with technical difficulties regarding reproduction raised by documents submitted for registration. In most cases the documents were plans or maps that definitely were part of the treaties or international agreements registered and for which the copies provided to the Secretariat were sufficiently clear to ensure adequate registration; nevertheless, given the technical processes available, the legibility of the documents in question would, upon reproduction in the *Treaty Series*, have been impaired to such a degree that the practical usefulness of publication would have been minimal while the preparation of new "originals" or negatives suitable for reproduction would have involved expenditures that could appear to be out of proportion. In such cases, the Secretariat, in consultation with the authority requesting registration, has refrained from publishing the documents in question; in every instance where this has occurred, an explanation has been included in the *Treaty Series*.<sup>15</sup>

<sup>12</sup>See United Nations, *Treaty Series*, vol. 633, No. 9035.

<sup>13</sup>See *Repertory*, vol. V, under Article 102, paras. 69-70.

<sup>14</sup>See para. 3 *supra*. Subsequent to the period under review the Secretariat brought its practice into conformity with article 80, paragraph 2, of the Vienna Convention, by regarding an organization or a Government designated as depositary as being, *ipso facto*, authorized to register or to request filing and recording on behalf of the parties.

<sup>15</sup>See, for example, United Nations, *Treaty Series*, vol. 639, No. 9141. It may be noted that a similar procedure was applied in 1960 at the request of the Government of a Member State: see United Nations, *Treaty Series*, vol. 354, No. 5064.