

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*, except that in section A of the Analytical Summary of Practice a new subsection 4 has been included and a new subheading *c* has been added in subsection 1 of the section. 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 subheadings in the Analytical Summary of Practice that do not call for comments on account of the lack of new material have been identified by asterisks (**). 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.

I. GENERAL SURVEY

2. The main developments that occurred during the period under review concerned the publication of treaties. At its thirty-second session, the General Assembly, by resolution 32/144, adopted, as a temporary measure, proposals submitted by the Secretariat under which agreements falling within certain categories would not be published *in extenso* until the normal one-year interval between registration and publication of other agreements could again be observed. At the thirty-third session, the General Assembly decided, by resolution 33/141 A, to amend Article 12 of the regulations to give effect to Article 102 of the Charter of the United Nations. The purpose of the amendment was to give the Secretariat the permanent option not to publish *in extenso* treaties falling within the categories specified in resolution 32/144 and within another category specified in resolution 33/141 A.

3. The following table shows the number of treaties and international agreements registered, or filed and recorded, from 1 January 1970 to 31 December 1978:²

Submitting party	Number of agreements		
	Registered	Filed and recorded	Total
States	6 282	18	6 300
Specialized agencies and IAEA.	2 046	74	2 120
<i>Ex officio</i>	581	-	581
By the Secretariat	-	37	37
Intergovernmental organizations	80	39	119
TOTAL	8 989	168	9 157 ³

4. From 1 January 1970 to 31 December 1978, 232 volumes of the United Nations *Treaty Series* were published, bringing to 848 the total number of volumes published as of 31 December 1978.

ANNEX

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

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) On 9 June 1971, the Secretary-General received a notification from Senegal to the effect that that State, which was a party to the Convention on the Territorial Sea and the Convention on Fishing and Conservation of the Living Resources of the Sea, of both of which the Secretary-General is the depositary, had decided to denounce those conventions, the denunciation to take effect on the thirtieth day after the date of receipt. In the absence of pertinent clauses providing for

the possibility of a denunciation in the conventions concerned and of specific instructions from the parties, the Secretary-General, in his capacity as the depositary, did not consider himself authorized to receive the notification of denunciation in deposit. Consequently, the denunciation could not be registered *ex officio* under the procedure set forth in article 4 (1) (c) of the General Assembly regulations to give effect to Article 102 of the Charter; instead, the registration of a certified statement of the denunciation was effected in the name of the Government of Senegal, in accordance with article 2 (1) of the regulations, as at the date of receipt of the notification of denunciation⁴ which was circulated to all States and to all international organizations concerned. In deciding to deal with the notification in this manner the Secretariat took into account that registration *ex officio* under article 4 (1) (c) of the regulations does not appear to exclude registration by a party under article 1 (3) thereof.⁵ The Secretariat also registered, under the numbers corresponding to the two conventions in question, objections submitted by the Government of the United Kingdom to the denunciation thereof by Senegal.⁶

(b) In accordance with article XXVI (5) (c) of the General Agreement on Tariffs and Trade (GATT), declarations of succession with respect to GATT treaties are in all cases notified directly to the Director-General of GATT, no separate notification being made to the Secretary-General, who is the depositary of certain of those treaties, with regard to the treaties deposited with him. It had thus been the practice of the Secretariat to register those declarations only in respect of the instruments deposited with the Director-General. The ground for this was that, although registration should have been effected *ex officio* in respect of succession to the instruments deposited with the Secretary-General, he did not have the proper elements to do so. It was decided on 25 January 1971 that registration would in the future be effected in respect of all actions, whether they concerned the instruments deposited with GATT or those deposited with the Secretary-General, upon receipt by the Secretary-General of a notification by the Director-General of GATT, such notification being considered as sufficient to allow the Secretary-General, as depositary of GATT agreements, to effect registration *ex officio*. In such cases, the date of registration is the date of receipt of the notification from GATT at the Secretariat.

(c) In a communication received by the Secretariat on 19 December 1978, the Government of the Union of Soviet Socialist Republics stated that only on a certain condition could it take cognizance of a declaration submitted by the Government of the Federal Republic of Germany together with the instrument of ratification, submitted by it with respect to the International Cocoa Agreement, 1975, to the effect that the Agreement would also apply to Berlin (West). This communication was registered by the Secretary-General, as a subsequent action relating to the Agreement, on the date of its receipt.

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) During the period under review, the Secretariat systematized and initiated the general application of a practice that had begun to develop earlier whereby, whenever in a given month a Government submits agreements for registration on more than one date, all the agreements thus submitted are registered on the date of the last submission.

(b) Also see (b) in note under article 2.

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) On 17 December 1975, the Secretariat included in the register and the *Treaty Series*, for the first time, a "note by the Secretariat".⁷ The note, after referring to a treaty between the United Kingdom of Great Britain and Northern Ireland and Cyprus that had been registered by the former, stated that that treaty provided for the termination of an earlier treaty between the two States that had likewise been registered. Neither of the parties had, however, registered the termination and the Secretariat did not consider that it was in a position to do so itself. This procedure of the note by the Secretariat was also used to deal with certain actions, notifications etc., concerning registered (or filed and recorded) treaties which would normally be excluded from the monthly statement because they are subject to neither registration nor filing and recording. Thus, it is under this procedure that the Secretariat has dealt with notifications of reapplication by the German Democratic Republic of treaties concluded under the auspices of the League of Nations to

which Germany was a party, as well as with notifications by the Federal Republic of Germany relating to those notifications by which the Federal Republic of Germany declares that in its relations with the German Democratic Republic, the reapplication has no retroactive effect beyond a certain date.⁸ The aim of the "note by the Secretariat" procedure is to provide complete information in the register and the United Nations *Treaty Series* regarding treaties registered or filed and recorded.

(b) By its resolutions 598 (VI) and 1452 B (XIV), the General Assembly requested the Secretary-General, in his capacity as depositary of multilateral treaties, not to pass upon the legal effects of reservations or objections to a treaty when that treaty does not contain provisions concerning reservations and to let, in such cases, each State draw the legal consequences from the documents containing the reservations or objections in question. Pursuant to those instructions, up to 20 November 1975, the practice of the Secretary-General was, with respect to instruments of ratification, accession etc., containing reservations or objections relating to any such treaty, to inform the States and the organizations concerned of the deposit, without indicating its entry into force. Registration under article 2 of the regulations was effected in the normal manner, but without indicating the date of entry into force of the instrument, whether in the monthly statements, the register of treaties or the *Treaty Series*. On 20 November 1975, the Secretary-General decided that thenceforth the date of entry into force would be indicated conditionally as follows:

"The [treaty], in accordance with its article [. . .], will enter into force in respect of [State] on [date], subject to the legal effects which each Party might wish to draw from the above-mentioned reservation[s] as regards the application of the said [treaty]."⁹

The change of practice was decided on two grounds: first, the treaty, in such cases, has always entered into force as between the State that has made the reservation and at least another State Party; second, registration (or filing and recording of) could not, of course, have been effected, by virtue of the General Assembly regulations, without assuming that the Treaty has entered into force on a given date, and it seems therefore hardly justifiable not to provide that date in the registration records and the United Nations *Treaty Series*.

(c) Before computerization was introduced, it had been the practice of the Secretariat, for mere reasons of economy of space, not to indicate in the monthly statements and in the *Treaty Series* itself the effective date of a subsequent action carried out with respect to a treaty deposited with the Secretary-General whenever, under the provisions of the treaty, that date coincided with the date of the action. In such a case, the reader was to assume, on the basis of the pertinent provisions of the treaty, that the action had taken effect on the date on which it had been effected, an assumption that the Secretariat had also made. However, because the indication of the date of entry into force is one of the requirements of the regulations to give effect to Article 102 of the Charter, the computer programs were so devised as not to accept registration of an agreement or a subsequent action where the effective date is not provided. Thus at present the computer automatically includes in the text for the register of treaties, the monthly statement and the *Treaty Series* the indication of the effective date of any subsequent action.

Article 12 (new)

"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 will, however, have the option not to publish *in extenso* a bilateral international agreement belonging to one of the following categories:

"(a) Assistance and co-operation agreements of limited scope concerning financial, commercial, administrative or technical matters;

"(b) Agreements relating to the organization of conferences, seminars or meetings;

"(c) Agreements that are to be published otherwise than in the series mentioned in paragraph 1 of this article by the United Nations Secretariat or by a specialized or related agency.

"3. In deciding whether or not to publish *in extenso* a treaty or international agreement belonging to one of the categories mentioned in paragraph 2 of this article, the Secretariat shall duly take into account, *inter alia*, the practical value that might accrue from *in extenso* publication. Treaties and international agreements that the Secretariat intends not to publish *in extenso* shall be identified as

such in the monthly statements of treaties and international agreements provided for in article 13 of these regulations, it being understood that a decision not to publish *in extenso* may be reversed at any time.

"4. Any State or intergovernmental organization may obtain from the Secretary-General a copy of the text of any treaty or international agreement which it has been decided, pursuant to paragraph 2 of this article, not to publish *in extenso*. The Secretariat shall likewise make a copy of any such treaty or agreement available to private persons against payment.

"5. In respect of each treaty or international agreement registered or filed and recorded, the series referred to in paragraph 1 of this

article shall include at least the following information: the registration or recording number, the names of the parties, the title, the date and place of conclusion, the date and method of entry into force, the duration (where appropriate), the languages of conclusion, the name of the State or organization that has registered it or transmitted it for filing and recording, and, if appropriate, references to publications in which the complete text of the treaty or international agreement is reproduced."

Note

For comments see under paragraphs 16 to 18 hereinafter.

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"*

5. In July 1970, the Secretariat determined that basic agreements concluded by the United Nations and the Food and Agriculture Organization of the United Nations, acting on behalf of the World Food Programme, with the Governments of recipient countries were subject to registration. A similar requirement was not made with respect to World Food Programme plans of operation entered into under basic agreements and World Food Programme project agreements entered into in the absence of basic agreements.

6. In 1974 the Government of a Member State submitted for registration two agreements it had concluded with the International Committee of the Red Cross. The Secretariat took the position that since that Committee is not an inter-governmental organization but the international Chapter of private national organizations, those agreements were not international agreements for the purposes of Article 102 of the Charter. They were accordingly not registered.

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

c. *Scope of the expression "entered into by any Member of the United Nations"*

7. During the period under review, an agreement concluded by two States at a time when neither one was a Member of the United Nations was registered by one of them following its admission to membership in the United Nations.¹⁰

**2. OBLIGATION TO REGISTER

3. REGISTERING PARTIES

8. In a *note verbale* dated 16 January 1974 to the Permanent Observer of a non-Member State, the Secretariat gave an affirmative reply to the question whether a state which is the depositary of a multilateral agreement to which it is not a party can register that agreement with the Secretary-General.¹¹ The Secretariat's conclusion was based upon the latest developments in the field of international law as they were reflected in articles 76 to 80 of the 1969 Vienna Convention on the Law of Treaties, article 80 of which specifically provides that "the designation of a depositary shall constitute authorization for it to perform the acts [relating to the registration or filing and recording and publication of treaties]".

9. In a letter dated 11 September 1974 to the Legal Adviser of the Permanent Mission of a Member State to the United Nations, the Secretariat similarly gave an affirmative answer to the question whether an intergovernmental organization which is the depositary of a multilateral treaty could, although it is not a party thereto, submit the treaty for registration (or filing and recording) in the absence of an express provision requiring or authorizing it to do so.¹²

4. THE QUESTION OF THE REGISTRABILITY OF INTERNATIONAL AGREEMENTS CONTAINING REFERENCES TO PRIOR INTERNATIONAL AGREEMENTS WHICH SHOULD HAVE BEEN BUT WERE NOT REGISTERED

10. A number of international agreements submitted to the Secretariat for registration during the period under review contained references to prior agreements which, although registrable, had not been submitted for registration. The position taken by the Secretariat in such cases has depended on whether knowledge of the prior agreement was or was not necessary for the application of the agreement submitted for registration. In cases where knowledge of the prior agreement was necessary for the application of the agreement submitted for registration, whether or not the prior agreement remained in force, the Secretariat has suggested that it be registered and deferred registration of the agreement submitted for registration pending registration of the prior agreement. In cases where the knowledge of the prior agreement was not necessary for the application of the agreement submitted for registration, including the cases where the agreement submitted for registration purely and simply replaced the prior agreement, the Secretariat has suggested registration of the prior agreement, but without deferring registration of the one submitted for registration.¹³

B. Treaties and international agreements not subject to registration

11. The special arrangements for co-operation between the United Nations and the International Criminal Police Organization (INTERPOL) approved by resolution 1579 (L) of the Economic and Social Council were not subjected to filing and recording. One of the reasons for this was that under the constitution of INTERPOL, the members of that organization, although designated by governments, are the police departments of the respective countries, which do not necessarily represent their governments as such. Another reason was that the constitution of INTERPOL did not appear to constitute a treaty. A further consideration was that the arrangements in question were not in the form of an agreement, consisting as they did of two juxtaposed resolutions, one adopted by the Economic and Social Council, the other by the General Assembly of INTERPOL.

12. In October 1976 the Secretariat decided that a memorandum of understanding concluded on 27 July 1976 between the Executive Director of the World Food Programme and the United Nations Disaster Relief Coordinator was not registrable. In taking the decision regard was had to the fact that the Office of the Coordinator was a part of the United Nations and that the World Food Programme was a combined service of the United Nations and the Food and Agriculture Organization of the United Nations; accordingly, the international character of the agreement embodied in the memorandum of understanding was so attenuated that it hardly seemed to fall within the category of the international instruments envisaged by Article 102 of the Charter and the General Assembly regulations.

C. Publication of treaties and international agreements

13. In the case of a bilateral agreement registered during the period under review, the Secretariat, in consultation with the registering Government, refrained from publishing an annex to that agreement consisting of approximately 70 pages of an inventory of equipment.¹⁴

14. Up to 31 December 1971 it was the practice of the Secretariat, in accordance with a procedure agreed upon with the International Bank for Reconstruction and Development (IBRD) to treat as non-registrable agreements those to which only one subject of international law was a party. Such was the case, for example, of a loan agreement by IBRD with a power company which related to guarantee agreements, development credit agreements etc. However, insofar as such agreements were annexes to those concluded between at least two subjects of international law (generally IBRD or IDA and a government), the Secretariat used to publish them together with the agreements registered.¹⁵ This practice was discontinued with respect to agreements registered after 31 December 1971. Instead, in any case where such an agreement mentioned an agreement not subject to registration, a footnote appended to the former gave the date of entry into force of the latter, stating that it had been published by IBRD (or IDA) and that its text had been provided to the Secretariat together with the documentation submitted for registration of the agreement published.¹⁶

15. Having regard to the inordinate delays in the publication of treaties that then existed, the Secretary-General proposed to the General Assembly,¹⁷ at its thirty-second session, a system of publication priorities under which agreements dealing with specific development projects and conference and seminar agreements, while continuing to be registered, would not be published until the normal one-year interval between registration and publication of other agreements could be observed again. The proposals of the Secretary-General were predicated on the fact that, because of the very restricted and standardized nature of those agreements, a delay in their appearance would seem to be less harmful, in terms of attaining the objectives of Article 102 of the Charter, than in the case of other agreements. By its resolution 32/144, the General Assembly approved, as a temporary measure, those proposals of the Secretary-General, also requesting him to initiate, in co-operation, as appropriate, with the specialized agencies and other international organizations concerned, such measures as would contribute towards the reduction of the current arrears, both in the field of registration and in the field of publication of international agreements.

16. In a report submitted to the General Assembly at its thirty-third session on the registration and publication of treaties, the Secretary-General presented a ten-year

plan for gradually eliminating the backlog.¹⁸ In introducing the report before the Sixth Committee of the General Assembly at that session, the Legal Counsel referred to the difficulty of implementing the plan, adding that it might accordingly be desirable to consider the possibility of amending the regulations established to implement Article 102 of the Charter. He observed that such an amendment should not only adapt the provisions of those regulations in the light of new registration techniques but also provide an opportunity to review the interpretation that had been given so far in practice of the term "published", as used in the Charter, so as to take into account existing conditions without in any way affecting the completeness of the United Nations compilation of treaties.¹⁹

17. In a note subsequently submitted at the thirty-third session of the Assembly to an informal working group established by the Assembly to consider the question of registration and publication of treaties, the Secretariat recalled that the Assembly had, in the past, interpreted the word "published" to mean published *in extenso* in the *Treaty Series*, but that the system of partial publication had been used at one time in the United Nations *Treaty Series* in order to avoid the complete reproduction of a long series of almost identical agreements.²⁰ The informal working group proposed to the Assembly a draft resolution, based on a proposal by the Secretariat, embodying an amendment to article 12 of the regulations to give effect to Article 102 of the Charter. As amended, that article would give the Secretariat the option not to publish *in extenso* bilateral treaties or international agreements falling within certain categories, regard being had to certain criteria laid down in the article, as amended.²¹ The draft resolution was endorsed by the Sixth Committee which recommended it for adoption by the General Assembly. The Assembly adopted it as resolution 33/141 A.

18. The Assembly also decided that article 12 of the regulations, as amended, could be applied retroactively by the Secretariat in respect of treaties already registered but not yet published.

NOTES

¹ G A resolution 97 (I), as amended by G A resolutions 364 B (IV), 482 (V) and 33/141 B.

² 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; for data from 1 January 1957 to 31 December 1959, see *Repertory, Supplement No. 2*, vol. III, under Article 102, para. 2; for data from 1 January 1960 to 31 August 1966, see *Repertory, Supplement No. 3*, vol. IV, under Article 102, para. 5; and for data from 15 September 1966 to 31 December 1969, see *Repertory, Supplement No. 4*, vol. II, under Article 102, para. 5.

³ This brought to 21,592 the number of treaties registered or filed and recorded from December 1946, when effective registration and filing and recording started, up to 31 December 1978.

⁴ See United Nations, *Treaty Series*, vol. 781 (1971), No. 7477 and No. 8164, p. 332.

⁵ An agreement concluded by Sweden with the United Nations High Commissioner for Refugees on 8 October 1956 was not registered by the United Nations but by the Government of Sweden. See United Nations, *Treaty Series*, vol. 428 (1962), No. 6182, p. 307.

⁶ United Nations, *Treaty Series*, vol. 854 (1973), Nos. 7477 and 8164, pp. 214 and 220, respectively.

⁷ See United Nations, *Treaty Series*, vol. 989 (1975), No. A.9342, p. 369.

⁸ See, for example, United Nations, *Treaty Series*, vol. 997 (1976), Nos. C.8 (a), C.11 and C.22 (a), pp. 508-509.

⁹For example, see United Nations, *Treaty Series*, vol. 1007 (1976), No. 14668, p. 393.

¹⁰Agreement between Switzerland and Hungary of 19 July 1950 on indemnification of certain Swiss claims, registered by the latter. See United Nations, *Treaty Series*, vol. 964 (1975), No. 13897, p. 157.

¹¹*Ibid.*, pp. 192-193.

¹²*United Nations Juridical Yearbook*, 1974, pp. 193-194.

¹³In one case an agreement submitted for registration referred to an agreement concluded by the parties to the former prior to the entry into force of the Charter. In that case the Secretariat suggested that the earlier agreement be filed and recorded. In another case, where an agreement submitted for registration referred to an agreement that had been registered but had been terminated, the Secretariat suggested that its termination be registered. (See, in the above Annex to the General Survey, note (a) under article 8.)

¹⁴United Nations, *Treaty Series*, vol. 781 (1971), No. 11134, p. 263. See the footnote on p. 264.

¹⁵See, for example, United Nations, *Treaty Series*, vol. 782 (1971), No. 11153, pp. 409 and 418.

¹⁶For example, see United Nations, *Treaty Series*, vol. 822 (1972), No. 11794, p. 333. This practice raised a difficulty with regard to the General Conditions that are incorporated by reference into IBRD and IDA loan agreements and were published in the *Treaty Series* together with the first loan agreement into which they were incorporated. Subsequent to their publication in the *Treaty Series*, the General Conditions were amended by an agreement that, not being registrable, was not published in the *Treaty Series*. Following the conclusion of that agreement a registrable agreement incorporated by reference the General Conditions, as thus amended. It was decided not to publish the amended text of the General Conditions, an explanatory footnote being, however, inserted under the first mention of the agreement by which the amendment was made. See *ibid.*, p. 334, footnote 3, and p. 342.

¹⁷A/32/214, paras. 29 to 34 (mimeographed).

¹⁸A/33/258, para. 20-23 (mimeographed).

¹⁹G A (33), 6th Com., 20th mtg., para. 8.

²⁰G A (33), Annexes, a.i. 119, A/C.6/33/5/Add.1, annex II, para. 5.

²¹*Ibid.*, A/C.6/33/5.