

ARTICLE 102

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TEXT OF ARTICLE 102

1. Every treaty or 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 the 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. See also the Summary of Practice of the Secretary-General as Depository of Multilateral Agreements,² which provides useful information on the practice of the Secretary-General.

¹G A resolution 97 (I), as amended; for the complete text, see United Nations, *Treaty Series*, vol. 859/860 (1973), pp. VIII to XX.
²ST/LEG/SER.E/15.

I. GENERAL SURVEY

1. During the period under review, the United Nations organs did not take any substantive decisions bearing on the contents of Article 101. In its resolution 34/149 of 17 December 1979, however, the General Assembly adopted provisions resulting in the modifications to the regulations to give effect to Article 102 in order to enhance the efforts of the Secretariat to eliminate the existing backlog in the registration and publication of treaties and international agreements. In this connection, the General Assembly noted that the Secretariat, on 9 September 1979, had sent to the Governments of Member States and certain intergovernmental organizations a questionnaire relating to their practice on international agreements. Furthermore, the General Assembly decided to include this question in the agenda of future sessions, in order to discuss any possible modifications to the regulations on the basis of sufficient information received in reply to the questionnaire.³ During the period under review, the Secretariat did not receive adequate responses to the questionnaire for the preparation of a comprehensive report on this issue.

3. The following table shows the number of treaties and international agreements registered, or filed and recorded by the Secretariat, from 1 January 1979 to 31 December 1984:⁴

<i>Submitting party</i>	Number of agreements		
	<i>Registered</i>	<i>Filed and recorded</i>	<i>Total</i>
States	4 591	32	4 623
Specialized agencies and IAEA	1 689	59	1 748
Ex officio	394	59	394
By the Secretariat	—	39	39
Intergovernmental organizations	89	—	89
TOTAL	6 763	130	6 893 ⁵

4. From 1 January 1979 to 31 December 1984, 263 volumes of the United Nations *Treaty Series* were published, bringing to 1,080 the total number of volumes published as of 31 December 1984.

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.

⁵This brought to 28,485 the number of treaties registered or filed and recorded with the Secretariat from December 1946, when effective registration and filing and recording started, up to 31 December 1984.

³GA decisions 35/436 of 15 December 1980 and 36/425 of 4 December 1981.

⁴For 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 December 1966, see *Repertory, Supplement No. 3*, vol. IV, under Article 102, para. 5; for data from 1 January 1967 to 31 December 1969, see *Repertory, Supplement No. 4*, vol. II, under Article 102, para. 5; and for data from 1 January 1970 to 31 December 1978, see *Repertory, Supplement No. V*, vol. V, under Article 102, para. 3.

NOTES

(a) According to the practice of the Secretariat with regard to the registration of certified statements under article 2 of the regulations, the party registering a subsequent action is required to indicate the date of entry into force of such an action.⁶ With respect to a subsequent action to a multi-depositary agreement, however, one of the difficulties resulting from the multi-depositary procedure is that Governments may and do deposit instruments with more than one depositary and that the various depositaries may not be certain that an instrument was not deposited earlier with another depositary. Therefore, each depositary is only in a position to determine the effective date of the subsequent action in relation to the date on which the instrument was deposited with himself, which may be at variance with the date(s) of deposit with the other depositaries.

In order to avoid varying dates of entry into force of subsequent actions to multi-depositary conventions, a Member State suggested to the Secretariat that the Secretariat itself would be in the best position to determine the effective date of such an action. The Secretariat, however, answered in the negative to this suggestion. Since the Secretariat may not receive all subsequent actions to a multi-depositary convention in chronological order, it cannot ascertain whether any previous deposit was effected by the party concerned with another depositary. Furthermore, in cases where the Convention provides for the entry into force of a subsequent action after a certain period of time, the practice of depositaries may vary in the computation of these periods and consequently the Secretariat would be obliged to seek confirmation of any assumption it might make with regard to effective dates. In its reply, the Secretariat suggested to Member States that they indicate, upon registration of a subsequent action to a multi-depositary Convention, the effective date of the subsequent action in question with the following proviso: "Provided that the deposit in . . . was the effective deposit for the purposes of article . . . of the Convention."⁷

(b) During the period under review, the Secretariat received for registration by a Member State a notification by which the Government of the Member State declared its decision to extend the scope of an agreement to additional items which were not covered by the agreement itself. The declaration was acknowledged without reservation or declaration by the other party. In view of such acknowledgement, the Secretariat considered the notification as constituting a unilateral declaration imposing additional obligation(s) on one party only. In accordance with the Secretariat's practice, unilateral declarations constitute registrable actions within the purview of Article 102 of the Charter and, therefore, registration of the declaration in question could be effected.⁸

(c) Within the framework of a multilateral Convention deposited with the Secretary-General, the Secretariat registered ex officio a joint declaration by France, the United Kingdom of Great Britain and Northern Ireland and the United States of America despite the fact that only the latter two States, i.e., the United Kingdom and the United States, were parties to the Convention in question.⁹ Under article 2 of the regulations, only subsequent actions, effected by a party to the agreement, can be registered.

The exception in this case was justified, however, for the following reason: the joint declaration was made in reply to previous objections made by the Union of Soviet Socialist Republics and the German Democratic Republic to a declaration on Berlin (West) made by the Federal Republic of Germany upon ratification of the Convention. In its declaration, the Federal Republic of Germany had declared the Convention applicable to Berlin (West) "subject to the rights of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America". In their objections to the declaration, the German Democratic Republic and the Union of Soviet Socialist Republics stated that they both considered

⁶See *Repertory, Supplement No. 5*, vol. V, under Article 102, Annex, article 8, notes (c).

⁷See United Nations, *Treaty Series*, vol. 1148 (1979), No. 15749, pp. 410 and 411.

⁸See United Nations, *Treaty Series*, vol. 1197 (1980), p. 421; for the Secretariat's practice, see *Repertory, Supplement No. 2*, vol. III, under Article 102, paras. 5-8.

⁹See United Nations, *Treaty Series*, vol. 1361 (1984), p. 352.

the said declaration of application as having no legal effect. Given the common responsibility of France, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Union of Soviet Socialist Republics for Berlin, as provided for in the Quadripartite Agreement of 3 September 1971,¹⁰ the Secretariat considered itself obliged to register the said joint declaration made by France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 3

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

NOTES

On 15 May 1979, Egypt registered the Treaty of Peace concluded with Israel at Washington on 26 March 1979 together with the Letter Agreement and annexed texts. On 14 June 1979, the Secretariat received from the Government of Israel documentation in respect of the said Treaty of 26 March 1979.

In accordance with article 3 of the regulations, only one registration of an agreement is necessary; when the Secretariat receives the documentation relating to an agreement previously registered, it normally informs the second submitting party of this fact.¹¹ In this case, however, both parties provided different information as to what documents in fact constituted the Treaty itself. Since under its long-standing practice the Secretariat acts in accordance with the position of the Member State submitting an instrument for registration and in view of the existing irreconcilable differences, the Secretariat accepted the documentation submitted by Israel for subsequent registration. In its view, it did not thus duplicate the registration already effected by Egypt.¹²

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 the 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:

NOTES

(a) Under article 5 of the regulations, every annex or attachment to a treaty has to be submitted together with the agreement itself, provided that it constitutes an integral part thereof. A particular case of interest, in this connection, is the so-called "Standard Provisions Annex", i.e., a special type of annex which is simultaneously attached to several agreements subsequently submitted for registration. The Secretariat considers it to be sufficient for the submitting party to provide the complete documentation of the Standard Provisions Annex only upon registration of the first agreement. At the time of the registration of subsequent agreements, a simple reference by the

¹⁰See United Nations, *Treaty Series*, vol. 880 (1973), No. 12621, p. 115.

¹¹For the Secretariat's practice on duplicate submissions, see *Repertory, Supplement No. 3*, vol. IV, under Article 102, paras. 16-18; see also para. 6 below.

¹²Egypt registered under No. 17813 (see United Nations, *Treaty Series*, vol. 1136 (1979), p. 100) the Treaty of Peace with the Letter Agreement and annexed texts including seven related letters to the Letter Agreement, which were not submitted by Israel. Israel, on the other hand, registered the Treaty of Peace and the texts under Nos. 17853 to 17856 and No. 17858 (*ibid.*, vol. 1138 (1979), p. 39 et seq.). In addition, Israel registered under No. 17857 an Exchange of letters which was not included in the documentation submitted by Egypt (*ibid.*, p. 167).

submitting party to the relevant Standard Provision Annex as already registered would satisfy the requirements of article 5 of the regulations.¹³

(b) In a note verbale of 25 January 1984 to the Permanent Representative of a Member State, the Secretary-General replied to the question whether all annexes to an agreement establishing the common State frontier should be included in the documentation submitted for registration in the form they are mentioned in the agreement itself. The Permanent Representative wished to submit a map on the scale of 1:200 000, giving an overall picture of the border in question.

The Secretary-General replied that the map proposed did not reproduce the entire contents of the frontier documentation as provided for in the agreement and hence would not meet the requirements of Article 102 of the Charter and the regulations. In this connection, however, the Secretary-General indicated that the documentation required for registration did not have to be submitted in the same form as the original. As long as the actual content was certified to conform to the original, the documentation could, for instance, be submitted in the form of microfilms. Another possibility could be that spare copies might be made available by the other party to the agreement, in which case the agreement would be registered in the name of both States.

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

Based on article 6 of the regulations, registration of a treaty submitted by a party or a specialized agency is regularly effected on the date of its receipt; provided, however, that the documentation is complete as required by article 5 of the regulations.¹⁴ When the documentation received is incomplete, the Secretariat postpones registration of the treaty in question and informs the submitting party to that effect, indicating the additional information or documentation necessary.

Upon receipt of the additional information or documentation, registration of the treaty in question is effected with the Secretariat as of the date of its initial receipt. Should, however, for any reason, the completion of the submitted documentation take a considerable amount of time, registration of the treaty can only be effected on the earliest possible date for the following practical reason: the preparation of the *Monthly Statement of Treaties and International Agreements* registered or filed and recorded during the month pertaining to the date of the original receipt of the treaty in question and in which agreements are assigned sequential immutable identification numbers has already been finalized. Therefore the Secretariat is no longer in a position to inscribe this treaty in the Register on the date of its initial receipt and is obliged to use the next available date in one of the following months thereafter, i.e., the earliest possible date.

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:

...

¹³See United Nations, *Treaty Series*, vol. 1229 (1981), No. 19856, p. 325.

¹⁴For the date of registration for several submissions during one month, see *Repertory, Supplement No. 5*, vol. V, under Article 102, annex, article 6, notes, para. (a).

(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.

NOTES

Under the provisions of this regulation, a system of optional submission was established with respect to agreements not subject to registration and, accordingly, the Secretariat inscribes the treaties or agreements received for the purpose of filing and recording in Part II of its Register. As provided for in paragraph (c) of article 10 of the regulations, this procedure, however, applies, *inter alia*, only to agreements and their amendments concluded by a Member State before the entry into force of the Charter.

International agreements concluded by a Member State after the entry into force of the Charter, even those amending an agreement originally concluded before the entry into force of the Charter and previously filed and recorded with the Secretariat or registered with the League of Nations, have to be registered according to article 1 of the regulations and do not fall under the category of agreements to be filed and recorded with the Secretariat. During the period under review, the Secretariat continued its existing practice and accepted for registration amending agreements concluded after the entry into force of the Charter, although the original agreements were either registered with the League of Nations or filed and recorded with the Secretariat.¹⁵

Article 12

...

2. The Secretariat will, however, have the option not to publish *in extenso* a bilateral treaty or international agreement belonging to one of the following categories:

(a) Assistance and cooperation 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.

...

NOTES

Following the adoption of General Assembly resolution 33/141 A on 19 December 1978 amending article 12 of the regulations,¹⁶ in accordance with its paragraph 2 the Secretariat decided not to publish *in extenso* bilateral agreements belonging to the following categories:¹⁷

(a) Loan, credit or guarantee agreements concluded by the United Nations, its organs, or by specialized agencies (in particular the International Bank for Reconstruction and Development, the International Development Association or the International Fund for Agricultural Development);

(b) Agreements relating to the organization of conferences, seminars or meetings also concluded by the United Nations, its organs or specialized agencies;

(c) Agreements relating to taxes, provided that the agreement is published in the United Nations Series on International Tax Agreements.

¹⁵See United Nations, *Treaty Series*, vol. 1128 (1979), No. 17568, p. 105; *ibid.*, vol. 1142 (1979), No. 17931, p. 198; *ibid.*, vol. 1203 (1980), No. 19218, p. 93; No. 19219, p. 101; and No. 19220, p. 107.

¹⁶See *Repertory, Supplement No. 5*, vol. V, under Article 102, paras. 2 and 16-18.

¹⁷This approach was continued unmodified during the period under review.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Registration of treaties and international agreements

**1. REQUIREMENTS FOR REGISTRATION

2. OBLIGATION TO REGISTER

5. In a note verbale of 21 January 1981, the Permanent Mission of a Member State replied to the suggestion of the Secretariat to register a bilateral agreement which had not been registered with the Secretariat and a reference to which had been noticed upon registration of another agreement. In its reply, the Permanent Mission stated that it was the practice of its Government to register (only) agreements which were concluded on its territory. The registration of agreements concluded in another country is normally left to the Government of that particular country. In its reply of 24 February 1982, the Secretariat referred to articles 1(3) and 3(1) of the regulations and indicated that those provisions did not modify the obligation to register an agreement taking into account the place of conclusion. In the case of bilateral agreements, since both parties would be in the possession of the originals and all relevant information required for their registration, the Secretariat considered each party to be in the position to duly register bilateral agreements.

3. REGISTERING PARTY

6. In accordance with article 3 of the regulations, the registration of an agreement by one party relieves all other parties of their obligation to register the agreement under article 1 of the regulations. Therefore, when the same agreement is subsequently submitted by another party, the Secretariat simply informs the submitting party that the agreement has already been registered, indicating the particulars of the registration. In the few cases where the same agreement is simultaneously submitted by two parties on the same date, registration will be effected in the name of the two parties.¹⁸

7. In one particular case, the Secretariat received an agreement for registration which could not be effected, as additional documentation was required from the submitting party. Subsequently, the Secretariat received the same agreement from the other party for registration. In view of the complete documentation submitted by the latter, registra-

tion of the agreement in question could be effected in the name of the (second) submitting party on the date of its receipt and the Secretariat accordingly informed the other party.¹⁹

8. With respect to multilateral treaties, registration is usually effected by a State, or an international organization acting in its capacity as depositary, or by a party to the treaty.²⁰ During the period under review, the Secretariat also proceeded with the registration of a treaty establishing a regional organization by the organization itself acting on behalf of the parties, although the organization in question was not the depositary of the treaty.²¹

B. Treaties and international agreements not subject to registration

9. On 29 August 1983, a Member State submitted the Solemn Declaration on the European Union signed in Stuttgart, Federal Republic of Germany, on 19 June 1983, indicating at the same time that the Declaration might not be registrable in accordance with Article 102 of the Charter. The Secretariat agreed with that view. Indeed, the Declaration had been issued at a meeting of the European Council of the European Economic Community (EEC) and therefore constituted a decision of that organ and not an agreement between the States members of the EEC. Given those circumstances, the Secretariat simply filed the Declaration for information.

C. Publication of treaties and international agreements

10. On several cases during the period under review, in preparing the text of an agreement for the respective volume of the United Nations *Treaty Series*, the Secretariat noticed that differences existed between the authentic language versions of the agreement, e.g., one of the authentic texts contained a sentence or a paragraph which did not appear in the other authentic language version. On the assumption that those differences were attributable to typographical errors or administrative oversights, the Secretariat published in brackets the missing text in the translations made by the Secretariat with the following footnote: "the text [paragraph, sentence, etc.] between brackets does not appear in the authentic text."²²

¹⁹Agreement of 23 April 1979 between Colombia and Czechoslovakia, registered by the latter on 14 July 1983 under No. 22047.

²⁰See *Repertory, Supplement No. 5*, vol. V, under Article 102, paras. 8 and 9.

²¹See United Nations, *Treaty Series*, vol. 1257 (1981), No. 20641, p. 311.

²²See United Nations, *Treaty Series*, vol. 1263 (1982), No. 20757, p. 206; *ibid.*, vol. 1386 (1984), No. 23183, pp. 284-295, and No. 23194, pp. 435-455.

¹⁸Agreement of 25 August 1982 between Brazil and Spain, registered on 4 October 1982 under No. 21267; for the date of registration for several submissions during one month, see note 14 above.