

## 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 VI of the *Repertory*. Decisions or actions taken by organs of the United Nations during the period under review are mentioned briefly in the general survey and are discussed in greater detail in the analytical summary of practice. In section A of the analytical summary of practice, a new subsection 4 has been added, entitled “Corrections of errors in texts and certified copies of registered treaties”. Those headings and sub-headings in the analytical summary of practice that do not call for comments owing to a 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 regulations to give effect to Article 102 of the Charter of the United Nations (the General Assembly regulations)<sup>1</sup> as well as the text of the regulations involved. See also the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*,<sup>2</sup> which provides useful information on the practice of the Secretary-General.

<sup>1</sup> G A resolutions 97 (I), as amended in resolutions 364 B (IV), 482 (V), 33/141 and 52/153; for the complete text, see United Nations, *Treaty Series*, vol. 859/860 (1973), p. VIII.

<sup>2</sup> ST/LEG/7/Rev.1 – United Nations publication, Sales No. E.94.V.15

## I. GENERAL SURVEY

2. During the period under review, the General Assembly did not take any substantive decisions bearing on the application of Article 102.

3. However, on 21 March 1986, the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, convened pursuant to decisions of the General Assembly, adopted the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986 (Vienna Convention, 1986).<sup>3</sup> The text of the Vienna Convention, 1986, which did not enter into force during the period under review,<sup>4</sup> is based on draft articles prepared by the International Law Commission<sup>5</sup> and contains with regard to registration and publication the following provisions:

<sup>3</sup> A/CONF.129/15. The Conference was held at Vienna from 18 February to 21 March 1986.

<sup>4</sup> See, *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1988* (United Nations publication, Sales No. E.89.V.3 and Add.1), chap. XXIII.3, p. 797.

<sup>5</sup> The General Assembly, in its resolution 40/76, transmitted the text of the draft articles of the International Law Commission to the Conference.

### “Article 78

#### “FUNCTIONS OF DEPOSITARIES

“1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

“...

“(g) Registering the treaty with the Secretariat of the United Nations;

“...

### “Article 80

#### “CORRECTIONS 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.

“...

“Article 81

“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. To the extent that the above-quoted provisions bear on the practice under Article 102 of the Charter, they are dealt with in the following summary,<sup>6</sup> which gives an account of significant developments that occurred during the period under review.

5. The following table shows the number of treaties and international agreements and related treaty actions registered, or filed and recorded, with the Secretariat from 1 January 1985 to 31 December 1988.<sup>7</sup>

**Number of agreements and related treaty actions**

<i>Submitting party</i>	<i>Registered</i>	<i>Filed and recorded</i>	<i>Total</i>
States	1 805	2	<b>1 807</b>
Specialized agencies and IAEA	1 441	51	<b>1 492</b>
Ex officio	258	1	<b>259</b>
Secretariat	–	43	<b>43</b>
Intergovernmental organizations	69	–	<b>69</b>
Treaty actions			<b>8 222</b>
<b>Total</b>	<b>3 573</b>	<b>97</b>	<b>11 892<sup>8</sup></b>

6. From 1 January 1985 to 31 December 1988, the Secretariat published 117 volumes of the United Nations *Treaty Series*,<sup>9</sup> bringing to 1,212 the total number of volumes published as of 31 December 1988.

<sup>6</sup> See paras. 9 and 10 below.

<sup>7</sup> 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 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; for data from 1 January 1970 to 31 December 1978, see *Repertory, Supplement No. 5*, vol. V, under Article 102, para. 3; and for data from 1 January 1979 to 31 December 1984, see *Repertory, Supplement No. 6*, vol. VI, under Article 102, para. 3.

<sup>8</sup> This brought to 40,377 the number of treaties and related treaty actions registered or filed and recorded with the Secretariat from December 1946, when effective registration and filing and recording started, up to 31 December 1988.

<sup>9</sup> See *Yearbook of the United Nations*, vol. 39, p. 1189; *ibid.*, vol. 40, p. 1007; *ibid.*, vol. 41, p.1077; *Ibid.*, vol. 42, p. 809.

ANNEX

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

*Article 1*

1. Every treaty or international agreement ... entered into by one or more Members of the United Nations ... shall as soon as possible be registered with the Secretariat in accordance with these regulations.

...

3. Such registration may be effected by any party ...

...

NOTES

In keeping with the provision of paragraph 3 of article 1 of the General Assembly regulations, the Secretariat continued, during the period under review, to accept for registration agreements submitted by intergovernmental organizations and also by non-international entities.<sup>10</sup>

*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

During the period under review, the Secretariat made an exception to the provision in paragraph 1 of article 3 of the General Assembly regulations that registration of the agreement by only one of the parties is necessary. The Secretariat registered and published two texts of an agreement in the name of the two submitting parties under the same registration number, because of a terminological discrepancy.<sup>11</sup>

<sup>10</sup> See para. 9 below.

<sup>11</sup> See para. 8 below.

## 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 development through practice.<sup>12</sup> It is noteworthy in this regard that, in accordance with article 2(1)(a) of both the Vienna Convention on the Law of Treaties, 1969 (Vienna Convention, 1969) and the Vienna Convention, 1986, the term "treaty" means an international agreement governed by international law and concluded in written form between States (Vienna Convention, 1969) or States and international organizations (Vienna Convention, 1986), that is, between parties having the legal capacity to conclude treaties at international law. Thus, in order to constitute a treaty subject to registration, or filing and recording, an international agreement must be concluded between two or more parties with such capacity. According to the practice of the Secretariat,<sup>13</sup> bilateral agreements where one of the parties does not possess the requisite international treaty-making capacity are neither registered, nor filed and recorded. During the period under review, the Secretariat therefore refrained from filing and recording an exchange of letters of 24 April 1986 between the United Nations and the City of Nagoya concerning the administration and organization of the Second Congress of Local Authorities in Asia and the Pacific proposed to be held in the City, since the latter did not have the requisite capacity. However, the Secretariat did file and record as an agreement the exchange of letters constituting an agreement between the United Nations and the Government of Japan concerning the arrangements for the Second Congress of Local Authorities in Asia and the Pacific to be held in Nagoya, Japan, of 23 April 1986,<sup>14</sup> in which the exchange of letters between the United Nations and the City of Nagoya was proposed and agreed, as both parties in this case had the requisite capacity.

\*\* (b) *Entry into force of treaties and international agreements*

\*\* (c) *Scope of the expression "entered into by any Member of the United Nations"*

<sup>12</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>13</sup> See *Repertory, Supplement No. 5*, vol. V, under Art.102, para. 6.

<sup>14</sup> See United Nations, *Treaty Series*, vol. 1424, No. 24039, p. 23.

#### 2. OBLIGATION TO REGISTER

8. In one case during the period under review, the Secretariat received for registration differing texts of a bilateral agreement (the Anglo-Irish Agreement, 1985) from each Member State party to the agreement. The texts differed only in the use of terminology relating to the names of the parties. According to article 3 of the General Assembly regulations, registration of the agreement by only one of the parties was necessary. In previous cases where the same agreement was submitted simultaneously by two parties on the same date, the practice of the Secretariat had been to effect registration in the name of both parties.<sup>15</sup> In this case, the Secretariat registered both texts of the agreement in the name of both parties under the same registration number, and published both texts in full because of the minor terminological discrepancy.<sup>16</sup>

#### 3. REGISTERING PARTY

9. According to paragraph 3 of article 1 of the General Assembly regulations, registration may be effected by any party. In keeping with a long-established practice,<sup>17</sup> the Secretariat continued, during the period under review, to accept for registration agreements submitted by intergovernmental organizations (such as the International Atomic Energy Agency and the International Labour Organization) that had been expressly authorized in their capacity as depositary of the agreements to effect registration, on the basis that submission by such organizations was tantamount to submission by the parties themselves.<sup>18</sup> In one case, the Secretariat registered an agreement submitted by a depositary who was not an international legal person (the Director of the International Tin Research Institute).<sup>19</sup> It should be noted in this regard that under article 80(2) of the Vienna Convention, 1969, and article 81(2) of the Vienna Convention, 1986, the designation of a depositary for an agreement constitutes authorization for it to submit the agreement to the Secretariat for registration, or filing and recording, and publication. The Secretariat continued to register treaties submitted for registration by the Secretary-General acting ex officio in keeping with his obligations as depositary under articles 77(1)(g) of the Vienna Convention, 1969, and 78(1)(g) of the Vienna Convention, 1986.<sup>20</sup>

<sup>15</sup> See *Repertory, Supplement No. 6*, vol. VI, under Article 102, para. 6.

<sup>16</sup> See United Nations, *Treaty Series*, vol. 1413, No. 23668, pp. 197 and 203.

<sup>17</sup> See *Repertory, Supplement No. 4*, vol. II, under Article 102, para. 9.

<sup>18</sup> See United Nations, *Treaty Series*, vol. 1439, No. 24404, p. 276; *ibid.*, vol. 1401, No. 23439, p. 235; *ibid.*, vol. 1498, No. 25799, p. 19.

<sup>19</sup> *Ibid.*, vol. 1464, No. 24831, p. 232.

<sup>20</sup> For details of the practice of the Secretary-General in this regard, see the present *Supplement*, under Article 98, para. 5 and note 11.

4. CORRECTIONS OF ERRORS IN TEXTS OR CERTIFIED  
COPIES OF REGISTERED TREATIES

10. During the period under review, the Secretariat continued to receive notifications of corrections of the texts of registered treaties as provided for under article 79(5) of the Vienna Convention, 1969, and article 80(5) of the Vienna Convention, 1986, including from the Secretary-General acting *ex officio* in keeping with his obligations as depositary under article 79(2) of the Vienna Convention, 1969, and article 80(2) of the Vienna Convention, 1986.<sup>21</sup>

<sup>21</sup> For further details of the practice of the Secretary-General in this regard, and developments in that practice, see the present *Supplement* under Article 98, para. 61, and notes 111-114.

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

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

11. During the period under review, the first steps were taken towards the standardization and elimination of duplicative steps in the publishing of the United Nations *Treaty Series*. Lists of signatory States of multilateral treaties were compiled and copies were made available for publishing. In addition, the repeating elements such as the "Note by the Secretariat" were prepared and used for publication purposes. These measures ensured uniformity of presentation and reduced processing costs since these pages no longer required processing for each volume of the *Treaty Series*.<sup>22</sup>

<sup>22</sup> See United Nations, *Treaty Series*, vol. 1388, No. 23225, p. 120; *ibid.*, vol. 1489, No. 25567, pp. 144-177; *ibid.*, vol. 1513, No. 26164, pp. 386-421; *ibid.*, vol. 1538, pp. 287-328.