FINAL CLAUSES OF MULTILATERAL TREATIES

HANDBOOK

United Nations

Final Clauses of Multilateral Treaties

Handbook

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Table of Contents

Foreword

In its resolution 36/112 of 10 December 1981 on the "Review of the multilateral treaty-making process", the General Assembly of the United Nations emphasized the importance of multilateral treaties as a primary source of international law. At the same time, it recognized the burden that multilateral treaty-making places upon Governments, the United Nations and the international community in general. Against this background, the Assembly requested the Secretary-General of the United Nations, *inter alia*, to prepare and publish a new edition of the Handbook of Final Clauses, taking into account relevant new developments and practices in that respect. The previous edition had been published in 1957.

Unfortunately, due to serious resource constraints, the Secretariat of the United Nations was not in a position to act on this request for many years. However, the need for a new edition of the Handbook remained. It has now finally become possible to fulfil the request of the General Assembly.

This new edition of the Handbook has been prepared by the Treaty Section of the United Nations Office of Legal Affairs, which discharges the depositary functions of the Secretary-General of the United Nations under multilateral treaties. The Handbook incorporates recent developments in the practice of the Secretary-General as depositary of multilateral treaties with regard to matters normally included in the final clauses of these treaties. Many of these developments reflect considered responses by the Office of Legal Affairs of the United Nations to concerns expressed by the international community.

The Handbook is a practical guide, intended to assist those who are directly involved in multilateral treaty-making. In particular, its purpose is to help States with scarce resources and limited technical proficiency in treaty law and practice to participate fully in the multilateral treaty-making process.

Provisions of multilateral treaties deposited with the Secretary-General of the United Nations are quoted in full in the Handbook. Additional examples are provided in footnotes. Finally, patterns are set and good practices recommended.

In addition to paper copies of this Handbook, an electronic copy is available at the United Nations web site at http://untreaty.un.org.

Users of this Handbook are encouraged to contact the Treaty Section of the Office of Legal Affairs by e-mail at treaty@un.org with any comments or questions.

Further useful information is available in the *Treaty Handbook* which is also available at http://untreaty.un.org.

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Under-Secretary-General for Legal Affairs
The Legal Counsel

FINAL CLAUSES OF MULTILATERAL TREATIES

HANDBOOK

Explanatory note

United Nations General Assembly resolution 36/112 of 10 December 1981 requested the Secretary-General of the United Nations to prepare a new Handbook of Final Clauses. The Treaty Section of the United Nations published the last edition of the Handbook of Final Clauses in 1957.

The purpose of the present Handbook is to provide an updated reference tool for drafting final clauses of multilateral treaties, taking into account new developments, including the practice of the Secretary-General of the United Nations as depositary of multilateral treaties. It is important to note that the practice of the Secretary-General of the United Nations in this regard has evolved in certain respects in the past few years. For example, on 28 August 2001, the Secretary-General of the United Nations promulgated the bulletin "Procedures to be followed by departments, offices and regional commissions of the United Nations with regard to treaties and international agreements" that reflects some of these developments (see Annex: ST/SGB/2001/7). In section 4.2 of this bulletin the Secretary-General of the United Nations expressly states that, in the case of treaties and multilateral agreements to be deposited with him, "[d]raft final clauses of such treaties and international agreements shall be submitted by the relevant department, office or regional commission to the Treaty Section of the United Nations for review and comment prior to finalization."

In the present Handbook, the term "treaty" means a multilateral agreement. Unless the context otherwise indicates, the term "State" may also apply to an international organization or any other entity that is entitled, under the provisions of the treaty, to become party thereto. The treaties discussed in this Handbook are almost exclusively multilateral treaties deposited with the Secretary–General of the United Nations. Since over 500 multilateral treaties are deposited with the Secretary-General of the United Nations, precedents and practices established by and in relation to those treaties have had an important influence in developments in this area.

Treaty Handbook in this publication refers only to the version reprinted in 2002 and the electronic version available on the Internet.

It is noted that the *Vienna Convention on the Law of Treaties, 1969*, is primarily concerned with treaties between States (article 1), and treaties which are constitutive instruments of international organizations and treaties adopted within

an international organization (article 5). The *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986*[1], deals with treaties between one or more States and one or more international organizations, and treaties between international organizations.

This Handbook follows the order in which the final clauses most frequently appear in multilateral treaties deposited with the Secretary-General of the United Nations.

[1] Not yet in force.

INTRODUCTION

A multilateral treaty may be drafted in different forms. However, the common practice is for a treaty to consist of one instrument that is comprised of a title, preamble, main text, final clauses, testimonium and signature block, and annexes (if appropriate). The final clauses of a multilateral treaty generally include articles on the settlement of disputes, amendment and review, the status of annexes, signature, ratification, accession, entry into force, withdrawal and termination, reservations, designation of the depositary, and authentic texts. In addition, articles may be included that address the relationship of the treaty to other treaties, its duration, provisional application, territorial application, and registration.

Once adopted, a multilateral treaty produces certain legal effects. Even if the treaty has not yet entered into force, some of its provisions, in particular the final clauses, are, by their nature and objective, immediately applicable (provisions on modalities of authentication of the text, establishment of the consent of States to be bound by the treaty, entry into force, reservations, functions of the depositary, etc.). These become applicable to the functions of the depositary. As article 24 (4) of the *Vienna Convention on the Law of Treaties, 1969,* states:

> 4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of adoption of its text.

From a technical point of view, the drafting of final clauses has undergone a number of changes and refinements over the years and these are reflected in this publication. Treaty law has gained in precision with these developments. The views expressed by the Secretary-General of the United Nations as depositary of multilateral treaties have had a significant impact on these developments.

In general, the final clauses of a treaty relate to procedural aspects rather than to substantive aspects of the treaty. However, well-drafted final clauses allow for the easy operation of the treaty and facilitate implementation by the parties and the depositary. They can have a significant impact on substance as well. Accordingly, precision in drafting the final clauses becomes important.

I. CONCLUSION OF TREATIES

A. ADOPTION AND AUTHENTICATION OF THE TEXT OF A TREATY

The adoption and authentication of an agreed text constitute the successful outcome of a treaty negotiation process.

In accordance with customary international law, as codified by the *Vienna Convention on the Law of Treaties, 1969* (hereinafter the "Vienna Convention, 1969"), the text of a multilateral treaty may be adopted by consensus of all States participating in the negotiations or voted upon by the appropriate body at an international conference. In the latter case, where the States have not agreed on a voting rule for that body, a treaty at an international conference is deemed to be adopted by the votes of two-thirds of the States present and voting, unless, by the same majority, they decide to apply a different rule (see article 9 of the *Vienna Convention, 1969*).

Once adopted, the text of a treaty is settled. The adopted text requires authentication. Authentication may occur in several ways (see article 10 of the *Vienna Convention, 1969*): for example, by signing *ad referendum* (affixing the signature of the representatives of those States participating in the negotiation of the text, subject to further confirmation by their governments) or by initialling the treaty or the Final Act incorporating the adopted text (affixing the initials of the negotiators) or by adopting the text by a resolution of the relevant body. The General Assembly of the United Nations (hereinafter the "General Assembly") has adopted by resolution texts negotiated under the auspices of bodies established by it on many occasions. Signature of the original of the treaty may be the mechanism used for authentication of the text of the treaty.

B. THE DEPOSITARY

In the past, when a multilateral treaty provided for its subsequent ratification, accession, etc., the States concerned, as in the case of bilateral agreements, exchanged the appropriate instruments. But the proliferation of multilateral treaties and the increase in the number of parties have resulted in the development of the institution of the depositary.

Initially, only States were depositaries. Then, particularly since the establishment of the League of Nations and later, the United Nations and its specialized agencies, international organizations have been increasingly entrusted with depositary functions. The Secretary-General of the United Nations (hereinafter

the "Secretary-General") is the depositary of over 500 multilateral treaties spanning the spectrum of human activity.

The depositary of a treaty is any State, organization or institution to whom the custody of that treaty is entrusted. The functions of the depositary are elaborated in articles 76 and 77 of the *Vienna Convention, 1969*.

> (See also paragraphs 9 to 37 of the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (hereinafter the "*Summary of Practice*")[2], and sections 2 and 6 of the *Treaty Handbook* prepared by the Treaty Section of the United Nations (hereinafter the "Treaty Section")).

1. Designation of the depositary

a. Normally, the treaty itself clearly designates the depositary in a separate provision. For the sake of clarity and certainty this would clearly be the preferred approach. The *Stockholm Convention on Persistent Organic Pollutants, 2001,* provides in article 29:

> Depositary
>
> The Secretary-General of the United Nations shall be the depositary of this Convention.[3]

Also article 53 of the *International Cocoa Agreement, 2001,* states:

> The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.[4]

b. Some treaties have adopted a more indirect approach to designating the depositary. The *International Convention for the Suppression of the Financing of Terrorism, 1999,* provides in article 28:

> The original of this Convention, of which the Arabic, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.[5]

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[2] ST/LEG/7 Rev.1.

[3] See also the *Convention on the Rights of the Child, 1989* (article 53); the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998* (article 29); the *International Convention on Arrest of Ships, 1999* (article 11); and the *United Nations Convention Against Transnational Organized Crime, 2000* (article 41).

[4] See also the *Food Aid Convention, 1999* (article XXI).

[5] See, for a similar provision, the *International Coffee Agreement, 2000* (article 55).

A parenthetical reference to the depositary (which is not recommended) is found in the *Terms of Reference of the International Copper Study Group, 1989.* Article 22(a) provides:

Entry into force

> 22. (a) These terms of reference shall enter into force definitively when States together accounting for at least 80 percent of trade in copper, as set out in the annex to these terms of reference, have notified the Secretary-General of the United Nations (hereinafter referred to as "the depositary") pursuant to subparagraph (c) below of their definitive acceptance of these terms of reference.

The articles providing for ratification, accession and entry into force may also refer to the deposit of instruments with the depositary. The *Agreement Establishing the Terms of Reference of the International Jute Study Group, 2001*, article 23 (a) reads:

Entry into force

> (a) These Terms of Reference shall enter into force when States, the European Community or any intergovernmental organization referred to in paragraph 5 above together accounting for 60 per cent of trade (imports and exports combined) in jute and jute products, as set out in Annex A to these Terms of Reference, have notified the Secretary-General of the United Nations (hereinafter referred to as "the depositary") pursuant to sub-paragraph (b) below of their provisional application or definitive acceptance of these Terms of Reference.

The *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000,* states, in article 21 (3) and (4):

> 3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
>
> 4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one

> member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

2. Transfer of depositary functions

Depositary functions initially entrusted to one depositary have occasionally been transferred subsequently to another depositary. For example, the functions exercised by the French Government under the *International Agreement for the Suppression of the White Slave Traffic* and the *International Convention for the Suppression of the White Slave Traffic, both of 1910,* and the *Agreement for the Repression of Obscene Publications, 1910,* were transferred to the Secretary-General in accordance with Economic and Social Council resolution 82 (V) of 14 August 1947.

3. Joint depositaries

Exceptionally, several depositaries are designated as joint depositaries. Article IX (2) of the *Treaty on the Non-Proliferation of Nuclear Weapons, 1968,* reads:

> 2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

During the cold war, this approach was adopted in certain treaties where the negotiating parties sought universal participation but were unable to acknowledge certain governments for political reasons.

The *Convention on the Privileges and Immunities of the Specialized Agencies, 1947*, in section 42 provides for the deposit of instruments, either with the Secretary-General or with the head of the relevant agency:

> Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members that are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-

> General of the United Nations or with the executive head of the specialized agency.

In practice, the only time the provision in the *Convention on the Privileges and Immunities of the Specialized Agencies, 1947,* was applied was when Nepal, prior to becoming a member of the United Nations, deposited an instrument in respect of the World Health Organization.

The Secretary-General has since taken the view that such a joint exercise of depositary functions was not desirable since, apart from the duplication of work, it might also lead to unnecessary complications resulting from possible differences in the depositary practices. Consistent with this approach, the Secretary-General refuses to be designated as co-depositary. In ST/SGB/2001/7, section 6.1, states:

> When it is intended that the Secretary-General discharge the depositary functions relating to treaties and international agreements, such treaties or international agreements shall confer the depositary functions on the Secretary-General only and not on any other official of the United Nations. The Secretary-General shall not be designated as a co-depositary.

(See also paragraphs 15 to 19 of the *Summary of Practice.*)

4. Designation of the Secretary-General of the United Nations as depositary

When it is intended that the Secretary-General be designated the depositary of a treaty, the Treaty Section should be consulted as soon as possible once the negotiations on the relevant multilateral treaty have commenced. The Secretary-General's acceptance of depositary functions is not automatic. He must be able to assume this role in the case of a particular treaty consistent with the considerations elaborated in ST/SGB/2001/7 and his practice as depositary of multilateral treaties.

In principle, the Secretary-General's policy is to accept the role of depositary for:

(a) open multilateral treaties of worldwide interest, usually adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations; and

(b) treaties negotiated under the auspices of the United Nations regional commissions. [6]

The reasons for this policy include: (a) the inability of the Secretary-General to accept the role of depositary for all multilateral treaties due to limited staff and other resources; (b) the United Nations should not replace the other specialized agencies and other international organizations as depositary of multilateral treaties concerning their specialized fields; (c) in the case of restricted multilateral treaties where the depositary responsibilities are so closely linked to the application of the substantive clauses that they could hardly be exercised by an entity other than a party to the treaty or an organ established by the treaty; (d) considerations relating to United Nations policies; (e) the precedent that would be set; and (f) it might create the impression that the Secretary-General would perform the role of depositary in each such case.

5. Functions of the depositary

a. Articles 76 and 77 of the *Vienna Convention, 1969,* provide that:

Article 76

Depositaries of treaties

> 1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
>
> 2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary

[6] Although it is unusual for the Secretary-General to accept the role of depositary for a treaty that does not fall within this framework, exceptions do exist. See the *Agreement on Succession Issues, 2001,* among Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia and the Federal Republic of Yugoslavia (today, Serbia and Montenegro). This Agreement was accepted in deposit on an exceptional basis, taking into consideration the political circumstances of that time, including:

(a) the *Agreement on Succession Issues, 2001,* was negotiated under the auspices the United Nations and as part of a coherent United Nations-led effort to bring stability to the region;
(b) during its negotiation process, the Office of Legal Affairs of the United Nations was consulted extensively;
(c) the political significance of the treaty; and
(d) the enormous investment that the United Nations and the international community made to achieve peace in the Balkan region.

with regard to the performance of the latter's functions shall not affect that obligation.

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:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

b. Some treaties designate the depositary and have specified in detail the functions of the depositary. Article 20 of the *Vienna Convention on the Protection of the Ozone Layer, 1985*, states:

> Depositary
>
> 1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any protocols.
>
> 2. The Depositary shall inform the Parties, in particular, of:
>
> (a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 13 and 14;
>
> (b) The date on which the Convention and any protocol will come into force in accordance with article 17;
>
> (c) Notifications of withdrawal made in accordance with article19;
>
> (d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with article 9;
>
> (e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with article 10;
>
> (f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof;
>
> (g) Declarations made in accordance with article 11, paragraph 3.

The inclusion of a provision of this nature, listing the functions of the depositary (or some of them), is superfluous, in view of the provisions of the *Vienna Convention, 1969*, and established practice, unless, of course, additional duties are added. It could also give rise to misinterpretations. The Secretary-General discourages negotiating parties from adding new duties inconsistent with his role as depositary. Since the depositary functions are well established and codified in article 77 of the *Vienna Convention, 1969*, it is adequate simply to designate a depositary. It would be understood that the duties would be performed in accordance with treaty law and established practice.

6. Limits of the functions of the Secretary-General of the United Nations as depositary

The responsibility of the Secretary-General, as depositary, should be limited to his established depositary functions and should not include administrative duties that may be performed by the Secretary-General in a different capacity.

Some treaties assign administrative functions to the Secretary-General that are not depositary functions *stricto sensu*. See the provisions on the transmittal to the parties of communications concerning the final outcome of proceedings brought in respect of crimes under article 2 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973*. These functions are, in actual fact, performed by an administrative unit in the Secretariat of the United Nations (hereinafter the "Secretariat"), in this case the Office of Legal Affairs, and not by the Secretary-General, in his capacity as depositary.

Similarly, other units of the Secretariat are responsible for dealing with communications under various conventions. The Division for the Advancement of Women plays an important role in assisting States Parties to fulfil their reporting requirements under the Committee on the Elimination of Discrimination against Women created under article 17 of the *Convention on the Elimination of Discrimination against Women, 1979*. The Division for the Advancement of Women also aids the Committee by researching substantive matters, disseminating information, and establishing functional procedures.

The *United Nations Convention on the Law of the Sea, 1982*, requires the Secretary-General to perform a mix of depositary and administrative functions. Following internal consultations within the Secretariat, it has been agreed that the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs would perform the administrative functions under this Convention while the Treaty Section would perform the depositary functions.

In the case of the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, 1998*, the Legal Counsel of the United Nations took the view that the notification functions for both the Compendium of Candidate Global Technical Regulations and the Registry of Global Technical Regulations created by this Agreement constituted administrative functions related to the implementation of the Agreement and not depositary functions. Accordingly, the Secretary-General could only undertake such administrative responsibilities in his capacity as the chief administrative officer of the Organization and not as the depositary. In accordance with Secretary-General's bulletin ST/SGB/1998/3, entitled "Organization of the Secretariat of the

Economic Commission for Europe", such administrative functions should be performed by the Secretariat of the Economic Commission for Europe.

C. PARTICIPATION IN MULTILATERAL TREATIES

Treaties generally specify in their final clauses the categories of States, organizations or other entities that may become a party thereto. The *United Nations Convention on the Law of the Sea, 1982*, lists in article 305 the entities that may become parties to the Convention and contains an annex concerning participation by international organizations. Articles 305 (1), 306 and 307 read:

Article 305

Signature

1. This Convention shall be open for signature by:

(a) all States;

(b) Namibia, represented by the United Nations Council for Namibia;[7]

(c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

[7] The Council for Namibia was established as a subsidiary organ of the General Assembly by resolution 2248 (S-V) of 19 May 1967. Unlike other subsidiary organs, the Council functioned in a dual capacity: as a policy-making organ of the General Assembly and as the legal Administering Authority of a Trust Territory. This latter characteristic of the Council distinguished it from other United Nations subsidiary organs. As the legal Administering Authority, the Council was expressly endowed by the General Assembly with certain competences and functions to be exercised on behalf of Namibia in terms comparable to that of a Government, *inter alia*, to represent Namibia internationally. Even though South Africa exercised de facto control over the Territory, the Council had the *de jure* competence to enact any necessary laws and recognitions. Indeed, the Council became a party to many treaties deposited with the Secretary-General, such as the *United Nations Convention on the Law of the Sea, 1982*, and the constituent acts of the Food and Agriculture Organization, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization. By resolution S-18/1 of 23 April 1990 the General Assembly admitted Namibia to membership in the United Nations.

(e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(f) international organizations, in accordance with annex IX.

Article 306

Ratification and formal confirmation

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph l(b), (c), (d) and (e), and to formal confirmation, in accordance with Annex IX, by the entities referred to in article 305, paragraph l(f). The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 307

Accession

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by the entities referred to in article 305, paragraph l(f), shall be in accordance with Annex IX. The instruments of accession shall be deposited with the Secretary-General of the United Nations. [8]

1. The "all States formula"

Treaties may be open to participation by "all States" or "any State". The "all States formula" has been used often in multilateral treaties that seek universal participation (see those treaties relating to disarmament, human rights, penal matters and environment.)

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, article 15, provides:

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December

[8] See also for similar wording the *Vienna Convention on Consular Relations, 1963* (articles 74 through 76).

1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.[9]

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*, article 86, states:

> 1. The present Convention shall be open for signature by all States. It is subject to ratification.
>
> 2. The present Convention shall be open to accession by any State.
>
> 3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.[10]

The *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973,* specifies in articles 14 to 16 that:

> Article 14
>
> This Convention shall be opened for signature by all States, until 31 December 1974, at United Nations Headquarters in New York.
>
> Article 15
>
> This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
>
> Article 16
>
> The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-

[9] See also the *Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, 1976* (article 9); the *Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II, and III), 1980* (article 3); the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992* (article 18); and the *Comprehensive Nuclear-Test-Ban Treaty, 1996* (article 11).

[10] See also the *International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973* (article 13); the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (article 25); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (article 25); the *International Convention against Apartheid in Sports, 1985* (article 16); the *Convention on the Rights of the Child, 1989* (article 46); and *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (article 86).

General of the United Nations. [11]

The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 24 provides:

> This Convention shall be open for signature at Stockholm by all States and regional economic integration organizations on 23 May 2001, and at the United Nations Headquarters in New York from 24 May 2001 to 22 May 2002. [12]

The "all States formula" has its drawbacks as it has given rise to the question whether certain territories or entities whose status as sovereign States was unclear would be permitted to participate in a treaty under this formula.

Practice of the Secretary-General

The Secretary-General, as depositary, stated on a number of occasions that it would fall outside his competence to determine whether a territory or other such entity would fall within the "any State" or "all States" formula. [13]

On 14 December 1973, the General Assembly issued a general understanding[14] stating that:

> The Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the Assembly in implementing such a clause and, whenever advisable, will request the opinion of the Assembly before receiving a signature or an instrument of ratification or accession. [15]

Since 1973 the General Assembly has, on occasion, given guidance on whether it considered a particular territory or entity a State. [16]

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[11] See also the *International Convention against the taking of hostages, 1979* (article 17); the *International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, 1989* (article 18); the *Convention on the Safety of United Nations and Associated Personnel, 1994* (article 24); the *International Convention for the Suppression of Terrorist Bombings, 1997* (article 21); the *Rome Statute of the International Criminal Court, 1998* (article 125); the *International Convention for the Suppression of the Financing of Terrorism, 1999* (article 25); the *United Nations Convention against Transnational Organized Crime, 2000* (article 36); and *Agreement on the Privileges and Immunities of the International Criminal Court, 2002* (article 34).

[12] See also the *Convention on Biological Diversity, 1992* (article 33); and the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998* (article 24).

[13] *Official Records of the General Assembly, Eighteenth Session,* 1258th plenary meeting (A/PV.1258).

[14] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No.30 (*A/9030).

[15] See *United Nations Juridical Yearbook, 1973* (United Nations publication, Sales No. E.75.V.1), p. 79, note 9, and ibid., 1974 (United Nations publication, Sales No. E.76.V.1), p. 157.

[16] See resolution 3067 (XXVIII) of 16 November 1973 in relation to Guinea-Bissau and the Democratic Republic of Viet-Nam.

The Secretary-General follows the advice of the General Assembly when he receives instruments relating to a treaty from an entity whose claim to being a State raises questions for the United Nations. It is not uncommon for the Secretariat (the appropriate unit would be the Office of Legal Affairs) to be consulted by negotiating parties when a difficulty in this respect is anticipated. Given the requirements of ST/SGB/2001/7, the Office of Legal Affairs is now in a position to draw the attention of the negotiating parties to any likely difficulty in this regard.

For example, regarding the Taiwan Province of China, the Secretary-General follows the General Assembly's guidance incorporated in resolution 2758 (XXVI) of the General Assembly of 25 October 1971 on the restoration of the lawful rights of the People's Republic of China in the United Nations. The General Assembly decided to recognize the representatives of the Government of the People's Republic of China as the only legitimate representatives of China to the United Nations. Hence, instruments received from the Taiwan Province of China will not be accepted by the Secretary-General in his capacity as depositary.

(See also paragraphs 81 to 87 of the *Summary of Practice*.)

2. The "Vienna formula"

The "Vienna formula" was developed to overcome the uncertainties of the "all States formula". The "Vienna formula" attempts to identify in detail the entities eligible to participate in a treaty. The "Vienna formula" permits participation in a treaty by Member States of the United Nations, Parties to the Statute of the International Court of Justice and States Members of specialized agencies or, in certain cases, by any other State invited by the General Assembly to become a party.

During the cold war, in the case of treaties open to "all States", certain differences arose over whether certain entities were to be recognized as States and whether they had the capability of becoming parties to a treaty.[17] To avoid such disputes essentially based on cold war politics, the "Vienna formula" was employed in many treaties. For technical reasons some States, which were not members of the United Nations, were allowed to be members of the United Nations specialized agencies. However, since the General Assembly adopted the general understanding of 14 December 1973, this practice became unnecessary (see "all States formula" above). The *Vienna Convention, 1969,* stipulates in articles 81 to 83:

[17] Examples include the German Democratic Republic, North Korea and North Vietnam.

Article 81

Signature

> The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention.[…]

Article 82

Ratification

> The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83

Accession

> The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

See also the *United Nations Framework Convention on Climate Change, 1992*, article 20:

> This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

Since 1992 the situation of the Federal Republic of Yugoslavia posed difficulties with respect to its participation in the United Nations and in multilateral treaties. The application of the "Vienna formula" in relation to the *United Nations Framework Convention on Climate Change, 1992,* was a case in point (see below "The Federal Republic of Yugoslavia").

3. The Federal Republic of Yugoslavia (as of 4 February 2003 "Serbia and Montenegro")

The former Socialist Federal Republic of Yugoslavia (hereinafter the "former Yugoslavia") was an original Member of the United Nations, the Charter having been signed and ratified on its behalf on 26 June 1945, and 19 October 1945, respectively. The following republics constituting the former Yugoslavia declared their independence on the dates indicated: Slovenia (25 June 1991), the former Yugoslav Republic of Macedonia (17 September 1991), Croatia (8 October 1991), and Bosnia and Herzegovina (6 March 1992). The Federal Republic of Yugoslavia (hereinafter "Yugoslavia") came into being on 27 April 1992 following the promulgation of its constitution on that day. Yugoslavia nevertheless advised the Secretary-General on 27 April 1992 that it would continue the international legal personality of the former Yugoslavia. Yugoslavia accordingly claimed to be a member of those international organizations of which the former Yugoslavia had been a member. It also claimed that all those treaty acts that had been performed by the former Yugoslavia were directly attributable to it, as being the same State.[18] Bosnia and Herzegovina, Croatia, Slovenia and the Former Yugoslav Republic of Macedonia, all of which had applied for and were admitted to membership in the United Nations, in accordance with Article 4 of the Charter[19], objected to this claim.

The General Assembly, in its resolution 47/1 of 22 September 1992, acting upon the recommendation contained in the Security Council resolution 777 of 19 September 1992, considered that Yugoslavia could not continue automatically the membership of the former Yugoslavia in the United Nations, and decided that it should accordingly apply for membership in the Organization. It also decided that Yugoslavia could not participate in the work of the General Assembly. The Legal Counsel took the view, however, that this resolution of the General Assembly neither terminated nor suspended the membership of the former Yugoslavia in the United Nations. At the same time, the Legal Counsel expressed the view that the admission of a new Yugoslavia to membership in the United Nations, in accordance with Article 4 of the Charter of the United Nations, would terminate the situation that had been created by General Assembly resolution 47/1.[20] General Assembly resolution 47/1 did not specifically address the question of the status of either the former Yugoslavia or of Yugoslavia with regard to multilateral treaties that were deposited with the Secretary-General. The Legal Counsel took the view in this regard that the Secretary-General was not in a position, as depositary, either to reject or to disregard the claim of Yugoslavia that it continued the legal personality of the former Yugoslavia, absent any decision to

[18] S/23877 and A/46/915.

[19] See General Assembly resolutions 46/237 adopted on 22 May 1992, 46/238 adopted on 22 May 1992, 46/236 adopted on 22 May 1992, and 47/225 adopted on 8 April 1993.

[20] A/47/485.

the contrary either by a competent organ of the United Nations directing him in the exercise of his depositary functions, or by a competent treaty organ created by a treaty, or by the contracting States to a treaty directing him in the exercise of his depositary functions with regard to that particular treaty, or by a competent organ representative of the international community of States as a whole on the general issue of continuity and discontinuity of statehood to which the claim of Yugoslavia gave rise.

Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, the Secretary-General, as depositary, continued to list treaty actions that had been performed by the former Yugoslavia in status lists in the publication *Status of Multilateral Treaties Deposited with the Secretary-General*[21] using for that purpose the short-form name "Yugoslavia", which was used at that time to refer to the former Yugoslavia. Between 27 April 1992 and 1 November 2000, Yugoslavia undertook numerous treaty actions with respect to treaties deposited with the Secretary-General. Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, these treaty actions were also listed in status lists against the name "Yugoslavia". Accordingly, the Secretary-General, as depositary, did not make any differentiation in the above-mentioned publication between treaty actions that were performed by the former Yugoslavia and those that were performed by Yugoslavia, both categories of treaty actions being listed against the name "Yugoslavia". The General Assembly admitted Yugoslavia to membership by its resolution 55/12 on 1 November 2000. At the same time, Yugoslavia renounced its claim to have continued the international legal personality of the former Yugoslavia.

The issue of the participation of Yugoslavia in a treaty containing the "Vienna formula" arose in the case of the *United Nations Framework Convention on Climate Change, 1992*. The Federal Republic of Yugoslavia signed this Convention on 8 June 1992, before the adoption of General Assembly resolution 47/1. Since the Secretary-General, as depositary, is guided in matters of representation and status of States and other entities by the decisions of competent United Nations organs, in view of the absence of such a decision until the adoption of resolution 47/1, he maintained the status quo with respect to Yugoslavia in the United Nations and its participation in United Nations activities. On this basis, during the Rio Conference on Environment and Development, the signature of Yugoslavia was accepted, consistent with article 20 of the Convention.[22] The acceptance on 3 September 1997 of the deposit by Yugoslavia of an instrument of ratification of the *United Nations Framework Convention on Climate Change, 1992*, was based on the interpretation of General Assembly resolution 47/1. Accordingly, in light of the Legal Counsel's view that

[21] ST/LEG/SER.E/21, status as at 31 December 2002.

[22] Several participants in the Conference reserved their positions as to the status of Yugoslavia and its participation in the Conference.

General Assembly resolution 47/1 had not terminated or suspended Yugoslavia's membership in the United Nations, the Secretary-General, as depositary, accepted in deposit this instrument of ratification pursuant to article 22 of the *United Nations Framework Convention on Climate Change, 1992*.

Following the admission of Yugoslavia to the United Nations on 1 November 2000 and the renunciation by Yugoslavia of its claim to continue the international legal personality of the former Yugoslavia, a review was undertaken of the multilateral treaties deposited with the Secretary-General, in relation to many of which the former Yugoslavia and Yugoslavia had undertaken a range of treaty actions. Four categories of treaty actions were identified:

a. Treaty actions undertaken by the former Yugoslavia prior to 27 April 1992;[23]

b. Treaty actions undertaken by Yugoslavia between 27 April 1992 and 1 November 2000, pursuant to its previous claim to continue the legal personality of the former Yugoslavia;

c. Treaty actions undertaken by Yugoslavia in its own right, and not dependent on prior treaty actions by the former Yugoslavia; and

d. Treaty actions undertaken by Yugoslavia which require membership in the United Nations or a specialized agency as an essential precondition.

The Legal Counsel advised Yugoslavia, following its admission to the United Nations, to undertake specific measures with regard to its status relating to treaties deposited with the Secretary-General. Accordingly:

1. Yugoslavia could succeed to treaty actions undertaken by the former Yugoslavia prior to 27 April 1992;

2. It could also succeed to those treaties to which the former Yugoslavia was a party, and in relation to which Yugoslavia had undertaken subsequent treaty actions. In such cases, Yugoslavia undertook the relevant actions between 27 April 1992 and 1 November 2000. In the process of indicating its succession to a particular treaty, Yugoslavia would also have to confirm the subsequent related actions undertaken during the period of 27 April 1992 to 1 November 2000;

[23] Yugoslavia assumed responsibilities for its international relations on 27 April 1992.

3. Treaty actions undertaken by Yugoslavia in its own right, and not dependent on prior treaty actions by the former Yugoslavia between 27 April 1992 and 1 November 2000 did not need further action; and

4. Treaty actions undertaken by Yugoslavia requiring membership in the United Nations or a specialized agency as an essential precondition needed to be confirmed on a case-by-case basis.

In the case of the *United Nations Framework Convention on Climate Change, 1992*, the issue arose as to whether the signature on 8 June 1992 and ratification on 3 September 1997 by Yugoslavia could be sustained. The Secretary-General took the view that he could not recognize these actions since Yugoslavia was not considered to have been a member of the United Nations or the specialized agencies at the time the actions in question were undertaken. Accordingly, these actions were voided and Yugoslavia deposited an instrument of accession to the *United Nations Framework Convention on Climate Change, 1992*, on 12 March 2001.[24]

4. International organizations

The *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986* (hereinafter the "Vienna Convention, 1986") in essence codified the practice of international organizations participation in treaties. Such participation primarily depends, as for States, upon the relevant provisions of the treaty.

a. Certain treaties cannot be implemented by international organizations by reason of their nature and the absence of competence in respect of the subject matter of those treaties. Accordingly, negotiating parties have taken the view that such treaties would not be open to international organizations. See the human rights conventions. The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*, provides in article 25:

> 1. This Convention is open for signature by all States.
>
> 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

[24] Similarly, the signature and ratification by Yugoslavia of the *Protocol extending the 1986 International Agreement on Olive Oil and Table Olives, 1993*, on 23 December 1993 was rendered null.

This formulation would prevent an international organization from becoming a party to this Convention.

b. In contrast, a treaty may contain provisions on participation of international organizations. In such a case, the treaty may identify the organizations that participation is open to or specify the characteristics and competencies that the organizations must possess.

The *Agreement on the Establishment of the International Vaccine Institute, 1996*, states:

> Article IV
>
> This Agreement shall be open for signature by all states and intergovernmental organizations at Headquarters of the United Nations, New York. It shall remain open for signature for a period of two years from 28 October 1996 unless such a period is extended prior to its expiry by the Depositary at the request of the Board of Trustees of the Institute.
>
> Article V
>
> This Agreement shall be subject to ratification, acceptance or approval by the signatory states and intergovernmental organizations referred to in article IV.

The *International Coffee Agreement, 2000*, states in article 4 (3) and (4):

> 3. Any reference in this Agreement to a Government shall be construed as including a reference to the European Community, or any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.
>
> 4. Such intergovernmental organizations shall not itself have any votes but in the case of a vote on matters within its competence it shall be entitled to cast collectively the votes of its member States. In such cases, the Member States of such intergovernmental organizations shall not be entitled to exercise their individual voting rights.[25]

[25] See also the *United Nations Convention on the Law of the Sea, 1982* (article 305).

5. Regional economic integration organizations

Certain treaties, in particular those covering trade, commodities, the seas and the environment are increasingly open to participation by international organizations. Negotiating parties have specifically identified regional economic integration organizations with full or shared competencies in the subject matter covered by those treaties as capable of participation.

The definition of a regional economic integration organization encompasses two key elements: the grouping of States in a certain region for the realization of common purposes and the transfer of competencies relating to those common purposes from the members of the regional economic integration organization to the organization. The term regional economic integration organization mainly refers to the European Communities.[26]

The European Community, as a regional economic integration organization, has the capacity to bind its members at the level of international law and to ensure that the provisions of treaties are implemented at the domestic level in those areas that its member States have transferred competence. It also has the power to enact legislation to ensure that its obligations under a treaty are implemented without additional approvals by the legislatures of its member States. Articles III (e) and XXII (a) and (b) of the *Food Aid Convention, 1999*, provide:

Article III

> (e) Subject to the provisions of Article VI, the commitment of each member shall be:

Member	**Tonnage**[(1)] (wheat equivalent)	**Value**[(1)] (millions)	**Total indicative value** (millions)
Argentina	35,000	-	
Australia	250,000	-	A$ 90[(2)]
Canada	420,000	-	C$ 150[(2)]
European Community and its member States	1,320,000	€130[(2)]	€422[(2)]
Japan	300,000	-	
Norway	30,000	-	NOK 59[(2)]
Switzerland	40,000	-	
United States of America	2,500,000	-	US$ 900-1,000[(2)]

(1) Members shall report their food aid operations in line with the relevant Rules of Procedure.
(2) Includes transport and other operational costs.

[26] There are three European Communities, the European Coal and Steel Community (ECSC); the European Community (EC), which was originally called the European Economic Community (EEC); and the European Atomic Energy Community (Euratom).

Article XXII

Signature and Ratification

(a) This Convention shall be open for signature from 1 May 1999 until and including 30 June 1999 by the Governments referred to in paragraph (e) of Article III.

(b) This Convention shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 June 1999, except that the Committee may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.

Exceptionally, other international organizations may be recognized for this purpose. It is noted that the Organization of African Unity is a party to the *Agreement establishing the Common Fund for Commodities, 1980*, which is open to "any intergovernmental organization of regional economic integration which exercises competence in the fields of activity of the Fund." Articles 4 (b) and 54 of the Fund provide:

Article 4

Eligibility

Membership in the Fund shall be open to:

(a) All States Members of the United Nations or any of its specialized agencies or of the International Atomic Energy Agency; and

(b) Any intergovernmental organization of regional economic integration which exercises competence in fields of activity of the Fund. Such intergovernmental organizations shall not be required to undertake any financial obligations to the Fund; nor shall they hold any votes.

Article 54

Signature and Ratification, Acceptance or Approval

1. This Agreement shall be open for signature by all States listed in schedule A, and by intergovernmental organizations specified in article 4(*b*), at United Nations Headquarters in New York from 1 October 1980 until one year after the date of its entry into force.

> 2. Any signature State or signatory intergovernmental organization may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until 18 months after the date of its entry into force.

Accordingly, the Secretary-General, as depositary, decided that the Gulf Cooperation Council could not participate in the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994* (which is open to participation by regional economic integration organizations), because it did not possess the characteristics and competences that a regional economic integration organization must possess.

6. Limitations on the ability of international organizations to participate in treaties

a. Some treaties provide that an organization may become party to a treaty only if its constituent member States are already parties to the treaty. A key concern is to avoid the parties to a regional economic integration organization being given additional votes in an international organization through the participation of the regional economic integration organizations. Article VIII (a) of the *Protocol to the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November, 1976,* states:

> This Protocol, of which the English and French texts are equally authentic, shall bear today's date and shall be open to signature by all States Parties to the Agreement, as well as by customs or economic unions, provided that all the member States constituting them are also Parties to the Protocol.

Furthermore, ratification by a regional economic integration organization will not be counted as an additional party for the purpose of determining the entry into force of the treaty. See the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 26(3)):

> For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.[27]

b. Unless the treaty itself otherwise provides, under international law, an international organization participating in a treaty does so in its own

[27] See also the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998* (article 26(3)).

capacity and on behalf of the organization as a whole, rather than on behalf of each and all of its member States. When the treaty provides for participation by States and international organizations, particularly regional integration organizations with shared competence in the implementation of that treaty, the treaty often specifies the responsibilities of the organization and its member States in the performance of their obligations and the exercise of their rights under that treaty to avoid concurrence. This practice is followed notably in the environmental field. This practice has also prevailed in the field of commodity agreements, in respect of the European Community and its member States, despite the exclusive competence of the European Community for trade in goods, including commodity agreements.

The *Convention on Biological Diversity, 1992,* illustrates these principles:

> Article 33
>
> Signature
>
> This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 to 14 June 1992, and at United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.
>
> Article 34
>
> Ratification, Acceptance or Approval
>
> 1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.
>
> 2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.[28]

[28] See also the *Vienna Convention for the Protection of the Ozone Layer, 1985* (articles 12 and 13), and the *United Nations Framework Convention on Climate Change, 1992* (articles 20 and 22).

7. Exclusive competence of international organizations

Certain treaties prohibit member States of international organizations from becoming parties to the treaty in their own right, in cases where that international organization has competence over all the matters governed by the treaty. The *Agreement for the Implementation of the Provisions of the 1982 United Nations Convention on the Law of the Sea, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995*, provides in article 47(2):

> 2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:
>
> (a) at the time of signature or accession, such international organization shall make a declaration stating:
>
> (i) that it has competence over all the matters governed by this Agreement;
>
> (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
>
> (iii) that it accepts the rights and obligations of States under this Agreement;
>
> (b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;
>
> (c) In the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

8. Participation by entities other than States or international organizations

In principle, non-metropolitan and other non-independent territories do not have the power to conclude treaties. However, the parent State may authorize such a territory to enter into treaty relations either *ad hoc* or in certain fields. On the basis of such delegated authority, some treaties authorize participation by entities other than independent States or international organizations. However, this is exceptional.

For example, Hong Kong is a party to the World Meteorological Organization, the World Tourist Organization and the World Trade Organization. [29] Articles XI and XII of the *Marrakesh Agreement establishing the World Trade Organization, 1994* provide:

> Article XI
>
> Original Membership
>
> 1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original members of WTO.
>
> 2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
>
> Article XII
>
> Accession
>
> 1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the

[29] Hong Kong, because of its economic significance has been allowed to become party to treaties on its own behalf while it was a United Kingdom overseas territory and, more recently, as the Hong Kong Special Administrative Region of China. The United Kingdom gave Hong Kong instruments of "Entrustment" to conclude certain treaties for which the United Kingdom would remain ultimately responsible. The *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 1984,* allows the Hong Kong Special Administrative Region to be a separate customs territory that may participate in international trade agreements and organizations.

> WTO. Such accession shall apply to this Agreement and the Multilateral Agreements annexed thereto.
>
> 2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of WTO.
>
> 3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article 305 (1) (c), (d) and (e) of the *United Nations Convention on the Law of the Sea, 1982*, permits certain self-governing associated States and internal self-governing territories to become parties, provided that they have competence on matters governed by the Convention, including the competence to enter into treaties in respect of those matters. Article 305(1) reads:

> 1. This Convention shall be open for signature by:
>
> (a) all States;
>
> (b) Namibia, represented by the United Nations Council for Namibia;
>
> (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
>
> (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
>
> (e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
>
> (f) international organizations, in accordance with Annex IX.

9. Regional agreements

Certain regional treaties adopted within the framework of the United Nations regional commissions provide that they are open, not only to the States members of the Commission and to regional economic integration organizations but also to States having consultative status with the Commission and other entities specified.

See the *Agreement on International Railways in the Arab Mashreq, 2003*, a treaty concerning the provision of railway links between countries of the region. Article 4 states:

> Signature, ratification, acceptance, approval and accession
>
> 1. This Agreement shall be open for signature to members of the Economic and Social Commission for Western Asia (ESCWA) at United Nations House in Beirut from 14 to 17 April 2003, and thereafter at United Nations Headquarters in New York until 31 December 2004.
>
> 2. The members referred to in paragraph 1 of this article may become Parties to this Agreement by:
>
> (a) Signature not subject to ratification, acceptance or approval (definitive signature);
>
> (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
>
> (c) Accession.
>
> 3. Ratification, acceptance, approval or accession shall be effected by the deposit of the requisite instrument with the depository.
>
> 4. States other than ESCWA members may accede to the Agreement upon approval by all ESCWA members Parties thereto, by depositing an instrument of accession with the depository. The Secretariat of the ESCWA Committee on Transport (the "Secretariat") shall distribute the applications for accession of non-ESCWA member States to the ESCWA members Parties to the Agreement for their approval. Once notifications approving the said application are received from all ESCWA members Parties to the Agreement, the application for accession shall be deemed approved.

D. OPENING FOR SIGNATURE

Time

a. When a multilateral treaty provides for its signature, it usually specifies the period of time when signatures could be affixed to the treaty. Some treaties are open for signature indefinitely. This is the case with most multilateral treaties on human rights for which universal participation is an overriding concern. The *Convention on the Elimination of All Forms of Discrimination against Women, 1979,* and the *Convention on the Rights of the Child, 1989,* provide in articles 25 (1) and 46:

> The present Convention shall be open for signature by all States.[30]

b. The most common approach in treaties is to indicate that they are open for signature until a specified event or a time period. The *Comprehensive Nuclear-Test-Ban Treaty, 1996,* in article XI provides:

> This treaty shall be open to all States for signature before its entry into force.

The *United Nations Convention on the Assignment of Receivables in International Trade, 2001,* in article 34 (1) specifies the following:

> This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

Venue

a. Treaties are most frequently open for signature at the United Nations Headquarters in New York unless specific arrangements are made with the Treaty Section consistent with ST/SGB/2001/7 to open a treaty for signature elsewhere. For example, the *Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997,* provides in article 34:

> The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May

[30] See also the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (article 86).

> 1997 until 21 May 2000 at United Nations Headquarters in New York.[31]

Treaties may be opened for signature in two different locations, at different times. Since there is only one original copy of each treaty deposited with the Secretary-General, it would not be physically possible to have the original text of a treaty in two simultaneous signature ceremonies. Treaties open for signature at two locations are very often open for signature at the place where the treaty was adopted and, subsequently, at United Nations Headquarters in New York. To facilitate treaty-signing events this was the case for most of the environmental conventions. This is done to facilitate high profile treaty signature ceremonies, which usually last for a short duration, arranged by the treaty secretariats or the States hosting the plenipotentiary conferences for the adoption of these treaties.[32] The arrangements are made in consultation with the Treaty Section. A representative of the Treaty Section customarily travels to the signing location and maintains custody of the original text.

b. The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 24, reads as follows:

> This Convention shall be open for signature at Stockholm by all States and regional economic integration organizations on 23 May 2001, and at the United Nations Headquarters in New York from 24 May 2001 to 22 May 2002.[33]

A unique situation occurred in relation to the *Convention on the Law of the Sea, 1982*. Exceptionally, it was open for signature at two locations simultaneously. Given the effect of ST/SGB/2001/7, this situation is unlikely to recur. Article 305 (2) stipulates that:

> 2. This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

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[31] See also the *Agreement on the establishment of the International Vaccine Institute, 1996* (article IV); the *International Convention on the Suppression of Financing of Terrorism, 1999* (article 25); and the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (article 34).

[32] In rare cases a treaty may be open for signature for a long period of time away from United Nations Headquarters. However, consistent with ST/SGB/2001/7, this is no longer the practice of the Secretary-General.

[33] See also the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997* (article 15); the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998* (article 12); and the *United Nations Convention against Transnational Organized Crime, 2000* (article 36).

Practice of the Secretary-General

In accordance with the Secretary-General's bulletin ST/SGB/2001/7, section 6.3, "[a]ll treaties and international agreements deposited with the Secretary-General and open for signature shall remain in the custody of the Treaty Section. Any exceptions to this rule shall be arranged in advance with the Treaty Section."[34] In the event that the negotiating parties are committed to a signature ceremony away from the United Nations Headquarters, it has been the practice of the Secretary-General as depositary of multilateral treaties to advise that the ceremonial signature period in locations away from New York Headquarters be limited to a few days. The costs involved in moving the treaty, the necessary staff away from Headquarters, and the security of the treaty itself are major considerations for the Secretary-General.

> (See also paragraphs 116 to 119 of the *Summary of Practice* for depositary practice regarding the opening for signature of multilateral treaties and section 3.1.2 of the *Treaty Handbook*.)

E. SIMPLE SIGNATURE

Apart from authentication,[35] signature has other legal effects. Signature is usually the first step in the process of becoming party to a treaty. Multilateral treaties generally provide for signature subject to ratification, acceptance or approval also called simple signature. Simple signature indicates the State's intention to undertake positive action to express its consent to be bound by the treaty at a later date.

Signature creates an obligation for a signatory State to refrain from acts that would defeat the object and purpose of the treaty, until such State makes its intention clear not to become a party to the treaty. This fundamental principle of treaty law is enshrined in article 18 of the *Vienna Convention, 1969*, article 18:

> Obligation not to defeat the object and purpose of a treaty prior to its entry into force.
>
> A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

[34] ST/SGB/2001/7.
[35] See chapter I, section A, above.

> (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; [36] or
>
> (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

A signatory State also has certain rights. It is entitled to become a party to the treaty that it has signed and it is a recipient of depositary notifications and communications relating to such treaty (see article 77 of the *Vienna Convention, 1969*).[37]

Signature provision

It is usual for multilateral treaties to contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc., as further discussed below. Article 34 of the *Agreement on the Privileges and Immunities of the International Criminal Court, 2002,* states:

> Signature, ratification, acceptance, approval or accession
>
> 1. The present Agreement shall be open for signature by all States from 10 September 2002 until 30 June 2004 at United Nations Headquarters in New York.
>
> 2. The present Agreement is subject to ratification, acceptance or approval by Signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General.
>
> 3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General.
>
> (For multilateral treaties deposited with the Secretary-General, practical information regarding arrangements with the Treaty Section to sign a treaty, see section 6.2 of the *Treaty Handbook*.)
>
> (For full powers to sign a treaty, when required, see the *Summary of Practice*, paragraphs 101 to 115, and the *Treaty Handbook*, section 3.2 and annexes 1 and 3.)

[36] See notifications of the United States of America and Israel in relation to the International Criminal Court in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER.E/21) or the electronic version available on the Internet, chapter XVIII.10.

[37] For practical reasons, it is the current practice of the Secretary-General as depositary that all States, even non-participant States, receive depositary notifications in hard copy and electronic format.

Although it is now an outdated practice, some multilateral treaties do not provide for their signature. Treaties adopted within the Food and Agriculture Organization normally provide for acceptance without prior signature as the way to express consent to be bound.[38] The *Protocol relating to the Status of Refugees, 1967*, the *Convention on the Privileges and Immunities of the Specialized Agencies, 1947*, and the *Convention on the Privileges and Immunities of the United Nations, 1946*, each provides that consent to be bound must be expressed by accession.

F. CONSENT TO BE BOUND BY A TREATY EXPRESSED BY SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

In order to become a party to a multilateral treaty, a State must demonstrate its willingness to undertake the legal rights and obligations contained in the treaty. It must express, through a concrete act, its consent to be bound by the treaty. A State can express its consent to be bound in several ways. The most common ways are definitive signature, ratification, acceptance, approval and accession (see article 11 of the *Vienna Convention, 1969*). These actions refer to acts undertaken at the international level requiring the execution of an instrument and the deposit of such instrument with the depositary.

> (See paragraphs 120 to 143 of the *Summary of Practice* and sections 3.3, 6.3 and annexes 4 and 5 of the *Treaty Handbook*.)

1. Definitive signature

Some treaties provide that States can express their consent to be legally bound by signature alone (see article 12 of the *Vienna Convention 1969*). This method is most commonly used in bilateral treaties and is rarely used in modern multilateral treaties. Where it is employed in a multilateral treaty, the entry into force provision will expressly provide that the treaty will enter into force upon the definitive signature and the deposit of instruments of ratification, acceptance, approval or accession by a specific number of States.

Of the treaties deposited with the Secretary-General, this method is most commonly used in certain treaties negotiated under the auspices of the Economic Commission for Europe. The *Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of such Inspections, 1997*, article 4 (3) states:

[38] See the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993*.

> Countries under paragraphs 1 and 2 of this Article may become Contracting Parties to the Agreement:
>
> (a) By signing it without reservation to ratification;
>
> (b) By ratifying it after signing it subject to ratification;
>
> (c) By acceding to it.

Also article 12 (2) of the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998,* provides:

> A State may express its consent to be bound by this Convention:
>
> (a) by signature (definitive signature);
>
> (b) by signature subject to ratification, acceptance or approval followed by deposit of an instrument of ratification, acceptance or approval; or
>
> (c) by deposit of an instrument of accession.

Practice of the Secretary-General

The depositary must ensure that the signatory does not exceed his or her powers. It is therefore necessary for the depositary to verify the nature and scope of the powers issued to the representative before the latter signs the treaty to ascertain, *inter alia*, whether the signature is subject to ratification. In those cases where the full powers are not required and the treaty provides for definitive signature, the depositary will normally request confirmation on this point. Where a signature is affixed without written confirmation of the intent of the signatory, the assumption is that it is a simple signature.

2. Ratification, acceptance and approval

a. Modern multilateral treaties explicitly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval (see article 14 of the *Vienna Convention, 1969*). The *United Nations Convention against Transnational Organized Crime, 2000,* provides in article 36 (3) that the Convention is subject to ratification, acceptance or approval:

Signature, ratification, acceptance, approval and accession

> 1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
>
> 2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
>
> 3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. […]

Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level. Upon ratification, the treaty legally binds the State.

The *International Covenant on Civil and Political Rights, 1966* , and the *International Covenant on Economic, Social and Cultural Rights, 1966*, provide in paragraphs 1 and 2 of articles 48 and 26, respectively, that the Covenants are subject to ratification:

> 1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
>
> 2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

b. Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise. The *Convention on Prohibitions or Restrictions on the Use of*

Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980, permits acceptance or approval with prior signature. Article 4 stipulates:

> 1. This Convention is subject to ratification, acceptance or approval by the Signatories. Any State which has not signed this Convention may accede to it.
>
> 2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
>
> 3. Expressions of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State, provided that at the time of deposit of its instrument of ratification, acceptance or approval of this Convention or accession thereto, that State shall notify the Depositary of its consent to be bound by any two or more of these Protocols.
>
> 4. At any time after the deposit of its instrument of ratification, acceptance or approval of this Convention or accession thereto, a State may notify the Depositary of its consent to be bound by any annexed Protocol by which it is not already bound.
>
> 5. Any Protocol by which a High Contracting Party is bound shall for that Party form an integral part of this Convention.

The *Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950*, allows for acceptance of the treaty as follows:

> Article X
>
> The States referred to in paragraph 1 of article IX may accept this Agreement from 22 November 1950. Acceptance shall become effective on the deposit of a formal instrument with the Secretary-General of the United Nations.

The European Community uses the mechanism of acceptance or approval frequently.

> (Model instruments of ratification, acceptance or approval are available in the *Treaty Handbook*.)

3. Accession

A State may express its consent to be bound by a treaty by accession (see article 15 of the *Vienna Convention, 1969*). Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance and

approval, which must be preceded by signature, accession requires only the deposit of an instrument of accession. Accession, as a means of becoming party to a treaty, is generally used by States wishing to express their consent to be bound by a treaty if, for whatever reason, they are unable to sign it. This may occur if the deadline for signature has passed or if domestic circumstances prevent a State from signing a treaty.

Accession is also an action that a new State may take when it does not wish to be bound immediately by virtue of succession, which is generally considered to be effective on the date the new State becomes responsible for its international affairs, unless it is not possible to determine such a date. For example, Serbia and Montenegro acceded to the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, on 12 March 2001.

a. The common approach is for multilateral treaties to provide for accession. article 16 of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, states:

> 1. This Convention is subject to ratification, acceptance or approval of the Signatories.
>
> 2. It shall be open for accession by any State which has not signed the Convention.
>
> 3. The instruments of ratifications, acceptance, approval or accession shall be deposited with the Depositary. [39]

b. Many treaties in the human rights field provide for accession at any time; they do not specify the deadline for signature. Article 18 of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, states:

> 1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
>
> 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Likewise, articles 48 (3) and 26 (3) of the *International Covenant on Civil and Political Rights, 1966,* and the *International Covenant on Economic,*

[39] See also the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992* (article 25).

Social and Cultural Rights, 1966, state:

> 3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article. [40]

c. Normally treaties permit accession from the day after they close for signature. This is consistent with the traditional approach. See article 25 (1) of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998,* which permits accession from the day after it closes for signature:

> 1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Similarly, article 24 (1) of the *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997,* provides that:

> 1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary. [41]

Other treaties provide for States to accede after the treaty enters into force. Disarmament treaties make provision of this nature. Article XIII of the *Comprehensive Nuclear-Test-Ban Treaty, 1996,* provides:

> Any State which does not sign this treaty before its entry into force may accede to it at any time thereafter. [42]

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[40] See also the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (article 25); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (article 26); the *Convention on the Rights of the Child, 1989* (article 48); and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (article 86).

[41] See also the *Vienna Convention for the Protection of the Ozone Layer, 1985* (article 14); and the *Convention on Biological Diversity, 1992* (article 35).

[42] See also the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992* (article XX); and the *International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973* (article XIV).

d. Some treaties may also permit accession without explicitly specifying when the action may be undertaken. This is a technique adopted in recent times to accommodate States that for various reasons are unable to sign a treaty but would nevertheless wish to become parties to it. See the *Rome Statute of the International criminal Court, 1998*, article 125:

> 1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.
>
> 2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
>
> 3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations. [43]

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997,* states:

> Article 15
>
> This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 to 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.
>
> Article 16
>
> 1. This Convention is subject to ratification, acceptance or approval of the Signatories.
>
> 2. It shall be open for accession by any State which has not signed the Convention.
>
> […]

[43] See also the *International Convention for the Suppression of the Financing of Terrorism, 1999* (article 25); the *United Nations Convention against Transnational Organized Crime, 2000* (article 36); and the *Agreement on the Privileges and Immunities of the International Criminal Court, 2002* (article 34).

In such cases, some States have deposited instruments of accession while the treaty was still open for signature. The Former Yugoslav Republic of Macedonia and Equatorial Guinea deposited their instruments of accession during the period when the Convention was still open for signature, i.e., before the entry into force of the Convention on 1 March 1999.

> (A model instrument of accession is available at page 49 of the *Treaty Handbook*.)

Practice of the Secretary-General

Where a treaty provides for conditions of accession (after a date or an event) but an instrument of accession is received before such conditions are fulfilled, the Secretary-General, as depositary, will inform the State that its instrument will be held until the conditions for accession are fulfilled; once fulfilled it will be accepted in deposit. Until then, the instrument will not count for the purposes of calculating the date of entry into force.

4. Ratification, acceptance, approval or accession with conditions

Some multilateral treaties impose specific limitations or conditions on ratification, acceptance, approval or accession. These conditions, being mandatory in most cases and specifically incorporated to achieve a particular objective, should be satisfied. When a State deposits with the Secretary-General an instrument of ratification, acceptance or approval, or accession to the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, article 3 (2) provides:

> 2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

A State depositing an instrument of ratification, acceptance or approval, or accession to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, must, at the same time, notify the Secretary-General of its consent to be bound by any two or more of the protocols related to

the Convention.[44]

The conditions under the *International Sugar Agreement, 1992*, article 41 are explicitly incorporated:

> This Agreement shall be open to accession by the Governments of all states upon conditions established by the council. Upon accession, the State concerned shall be deemed to be listed in the annex to this Agreement, together with its votes as laid down in the conditions of accession.
>
> Accession shall be effected by the deposit of an instrument of accession with the depositary. Instruments of accession shall state that the Government accepts all the conditions established by the Council.

When the consent of a State to be bound by a treaty is expressed in any of the forms discussed above, an instrument of ratification, acceptance, approval or accession establishes such consent upon deposit with the depositary. In the practice of the Secretary-General, it is the date of deposit of the communication with the depositary that is relevant. Accordingly, the depositary performs functions of considerable significance, including determining the date when the treaty enters into force.

G. PROVISIONAL APPLICATION OF A TREATY

1. Provisional application of a treaty before its entry into force

Provisional application of a treaty may occur when a State unilaterally decides to give legal effect to the obligations under a treaty on a provisional and voluntary basis. This provisional application may end at any time.

A treaty or part of it is applied provisionally pending its entry into force if either the treaty itself so provides or the negotiating States, in some other manner, have so agreed. Article 25 (1) of the *Vienna Convention, 1969*, states:

> Provisional application
>
> A treaty or a part of a treaty is applied provisionally pending its entry into force if:

[44] The relevant protocols are Protocols I, II and III of 10 October 1980; Protocol IV of 13 October 1995; and Protocol II, as amended, of 3 May 1996. Any State that expresses its consent to be bound by Protocol II after the amended Protocol II entered into force on 3 December 1998 is considered to have consented to be bound by Protocol II, as amended, unless it expresses a contrary intention. Such a State is also considered to have consented to be bound by the unamended Protocol II in relation to any State that is not bound by Protocol II, as amended, pursuant to article 40 of the *Vienna Convention, 1969*.

(a) the treaty itself so provides; or

(b) the negotiating States have in some other manner so agreed.

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, article 18 states:

Provisional application

> Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Also, article 7 of the *Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, provides:

Provisional application

> 1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:
>
> (a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;
>
> (b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;
>
> (c) States and entities which consent to its provisional application by so notifying the depositary in writing;
>
> (d) States which accede to this Agreement.
>
> 2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.[45]

Article 308 (4) of the *United Nations Convention on the Law of the Sea, 1982*, stipulates:

[45] The *Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, applied provisionally with effect from 16 November 1994, the date on which the *United Nations Convention on the Law of the Sea, 1982*, entered into force.

> 4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.

Unless the treaty provides otherwise a State may unilaterally terminate such provisional application at any time upon notification to the depositary.[46]

2. Provisional application of a treaty after its entry into force

Provisional application is possible even after the entry into force of a treaty. This option is open to a State that may wish to give effect to the treaty without incurring the legal commitments under it. It may also wish to cease applying the treaty without complying with the termination provisions. The *International Cocoa Agreement, 1993*, article 55 (1) provides:

> Notification of Provisional Application
>
> 1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government for which the Council has established conditions for accession, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 56 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.[47]

H. RESERVATIONS

The *Vienna Convention, 1969,* defines a reservation as a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (see article 2(1)(d)). The *Vienna Convention, 1986,* uses a similar definition (see article 2(1)(d)).

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[46] See paragraph 2 of article 25 of the *Vienna Convention, 1969.* Article 25 (2) of the *Vienna Convention, 1969*, deals with the difference between termination of the provisional application and termination of or withdrawal from a treaty by consent of the parties as provided in article 54 of the *Vienna Convention, 1969*, Pursuant to article 54, a State may terminate the provisional application at any time but a State that has expressed its consent to be bound by a treaty through definitive signature, ratification, acceptance, approval or accession, generally can only withdraw or terminate it in accordance with the treaty provisions or in accordance with general rules of treaty law.

[47] See also the *International Agreement on Olive Oil and Table Olives, 1986* (article 54), and the *International Sugar Agreement, 1992* (article 39).

Reservations restrict or modify the effects of treaties but they may help to promote international relations by enabling States to participate in treaties that they would not participate in without reservations. Reservations to multilateral treaties raise the immediate question of their admissibility and validity.

The Secretary-General's practice has seen the law on reservations develop. In some areas, such developments were not envisaged in the *Vienna Convention, 1969*.

> (See the *Summary of Practice*, paragraphs 161 to 216. For current practice see *Treaty Handbook*, sections 3.5 and 6.4. See also the Reports of Alain Pellet, Special Rapporteur for the topic "law and practice relating to reservations to treaties" as appointed by the International Law Commission at the forty-sixth session in 1994.[48])

1. Formulation of reservations

Article 19 of the *Vienna Convention, 1969,* on the formulation of reservations provides that:

> A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation, unless:
>
> (a) the reservation is prohibited by the treaty;
>
> (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
>
> (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

In accordance with article 20 (1) of the *Vienna Convention, 1969,* a reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States, unless the treaty so provides.

Where reservations are permitted

a. Some treaties expressly permit reservations. The *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998,* in its article 14 (1) sets forth the following:

[48] A/CN.4/470 and Corr.1 (first report); A/CN.4/477 and Add.1 (second report); A/CN.4/491 and Corr.1 (English only), A/CN.4/491/Add.1, Add.2 and Corr.1, Add.3 and Corr.1 (Chinese, French and Russian only), Add.4 and Corr.1, Add.5 and Add.6 and Corr.1 (third report); A/CN.4/499 (fourth report); A/CN.4/508/Add.1 to 4 (fifth report); A/CN.4/518 and Add.1 to 3 (sixth report); and A/CN.4/526 and Add.1 to 3 (seventh report).

> When definitively signing, ratifying or acceding to this Convention or any amendment hereto, a State Party may make reservations.

b. Treaties providing for reservations may also contain clauses stipulating the legal consequences deriving from a reservation or an objection. This is not common in recent practice. The *Convention on the Nationality of Married Women, 1957*, article 8 (2) provides that:

> If any State makes a reservation in accordance with paragraph 1 of the present article, the Convention, with the exception of those provisions to which the reservation relates, shall have effect as between the reserving State and the other Parties. The Secretary-General of the United Nations shall communicate the text of the reservation to all States which are or may become Parties to the Convention. Any State Party to the Convention or which thereafter becomes a Party may notify the Secretary-General that it does not agree to consider itself bound by the Convention with respect to the State making the reservation. This notification must be made, in the case of a State already a Party, within ninety days from the date of the communication by the Secretary-General; and, in the case of a State subsequently becoming a Party, within ninety days from the date when the instrument of ratification or accession is deposited. In the event that such a notification is made, the Convention shall not be deemed to be in effect as between the State making the notification and the State making the reservation.

c. Reservations may be withdrawn at any time by the reserving State. Such withdrawals do not require the consent of other parties (see article 22 (1) of the *Vienna Convention, 1969*). Although not a common practice in contemporary multilateral treaties, it is possible to provide for the withdrawal of reservations. Article 20 (3) of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, that provides:

> Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received. [49]

When permitted by the treaty, reservations are to be made at the time of signing or of depositing an instrument expressing the consent to be bound by the treaty. If a reservation is formulated upon simple signature, it must be confirmed when the State expresses its consent to be bound. If the reservation made at the time of

[49] Examples of similar wording are found in the *Convention on the Rights of the Child, 1989* (article 51); the *International Convention Against Recruitment, Use, Financing and Training of Mercenaries, 1989* (article 17); the *International Convention for the Suppression of Terrorist Bombings, 1997* (article 20); and the *International Convention for the Suppression of the Financing of Terrorism, 1999* (article 24).

simple signature were not confirmed upon ratification, acceptance or approval, it would have no legal validity.

In some instances, States parties formulate reservations after having expressed their consent to be bound (late reservations).

> (For the time for formulating reservations, see also section 3.5.3 of the *Treaty Handbook*.)

Practice of the Secretary-General

Where a State formulates a reservation expressly authorized by the treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification.

Where reservations are prohibited

a. It is not unusual for some treaties to expressly prohibit reservations. All reservations are prohibited under article 120 of the *Rome Statute of the International Criminal Court, 1998*:

> No reservations may be made to this Statute.[50]

Treaties in the environmental field often prohibit reservations. The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 27 provides that:

> No reservations may be made to this Convention.

The *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, article 18 provides:

> No reservations may be made to this Protocol.

The *Vienna Convention for the Protection of the Ozone Layer, 1985,* states in article 18:

> No reservations may be made to this Convention. [51]

b. Other treaties implicitly prohibit the formulation of reservations. For example, it is generally acknowledged that international labour

[50] See also provisions with similar but not identical wording: the *International Natural Rubber Agreement, 1987* (article 67); and the *International Coffee Agreement, 2000* (article 47).

[51] Provisions with identical wording include the *United Nations Framework Convention on Climate Change, 1992* (article 24); the *Convention on Biological Diversity, 1992* (article 37); the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994* (article 37); and the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 27).

conventions implicitly prohibit reservations due to the objective of the International Labour Organization (ILO) to make uniform the labour conditions worldwide.

Practice of the Secretary-General

Where a treaty prohibits reservations, the Secretary-General, as depositary, makes a preliminary legal assessment as to whether a given statement constitutes a reservation.

If the statement has no bearing on the State's legal obligations, the Secretary-General circulates the statement. If the statement *prima facie* unambiguously excludes or modifies the legal effects of the provisions of the treaty, the Secretary-General will draw the attention of the State concerned to the issue. The Secretary-General may also request clarification from the declarant on the real nature of the statement. If it is formally clarified that the statement is not a reservation, the Secretary-General will formally receive the instrument in deposit and notify all States concerned. Such clarification will estop the State concerned from relying on its "reservation" later.

States may also revise the statements that they submitted.

Where only certain reservations are permitted

a. A treaty may permit certain reservations only. The *International Convention on Arrest of Ships, 1999*, in its article 10 states:

> Reservations
>
> 1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any of the following:
>
> (a) ships which are not seagoing;
>
> (b) ships not flying the flag of a State Party;
>
> (c) claims under article 1, paragraph 1(s).
>
> 2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, the rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

b. Other treaties prohibit reservations with exceptions. See article 309 of the *United Nations Convention on the Law of the Sea, 1982*, to which no

entity may make a reservation or exception, unless expressly permitted elsewhere in the Convention:

> Reservations and exceptions
>
> No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention. [52]

Article 2 of the *Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, provides that article 309 of the Convention also applies to the Agreement.

Article XV of the *Comprehensive Nuclear-Test-Ban Treaty, 1996,* in respect to its Protocol and the annexes to the Protocol provides:

> The Articles of and the Annexes to this Treaty shall not be subject to reservations. The provisions of the Protocol to this Treaty and the Annexes to the Protocol shall not be subject to reservations incompatible with the object and purpose of this Treaty. [53]

2. Formulation of reservations: where the treaty is silent on reservations

Many treaties do not make provision for reservations. Human rights treaties often fall into this category. [54] That is the case of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948,* which, following the formulation of reservations made by the former Soviet Union and other Eastern European countries to some of its provisions,[55] marked an important step in the development of the doctrine relating to the admissibility of reservations.

The basic rules relating to reservations are embodied in article 19 of the *Vienna Convention, 1969*, which states:

> A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

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[52] Similar wording is found in the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (article 44).

[53] See the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992* (article XXII).

[54] See the *International Covenant on Economic, Social and Cultural Rights, 1966*; the *International Covenant on Civil and Political Rights, 1966*; the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968*; the *International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;* the *International Convention against Apartheid in Sports, 1985*; and the *Agreement establishing the Fund for the Indigenous Peoples of Latin America and the Caribbean, 1992*.

[55] For the text of reservations concerning articles IX and XII of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948,* see *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER.E/21) or its electronic version available on the Internet, chapter IV.1.

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Articles 20 and 21 of the *Vienna Convention, 1969,* deals with objections to reservations and the legal effects of reservations and objections to reservations. Withdrawal of reservations is dealt with under article 22 of the *Vienna Convention, 1969*. Reservations and objections to reservations, as well as withdrawal of reservations or objections must be formulated in writing (see article 23 of the *Vienna Convention, 1969*).

Practice of the Secretary-General

Where a treaty is silent on reservations and a State formulates a reservation consistent with article 19 of the *Vienna Convention, 1969*, the Secretary-General, as depositary, informs the States concerned of the reservation by depositary notification.

(See also the *Summary of Practice*, paragraphs 168 to 181.)

I. DECLARATIONS

The contemporary practice shows a proliferation of declarations in relation to treaties. Articles on declarations and notifications included in the text of the treaty are not always found in the sections addressing the final clauses or final provisions. Instead, they may appear in other sections of the treaty text.

(See the *Summary of Practice*, paragraphs 217 through 220, and the *Treaty Handbook*, section 3.6.)

1. Interpretative declarations

Unlike reservations, interpretative declarations do not purport to exclude or limit the legal effect of certain provisions of a treaty in their application to a particular State but only to clarify their meaning or interpretation. However, in practice, the determination of whether a statement is a declaration or an unauthorized reservation may become complex. See paragraphs 217 to 220 of the *Summary of Practice*.

Declarations are usually made at the time of signature or at the time of the deposit of the relevant instrument.[56]

A treaty may expressly provide for the formulation of declarations. Article 310 of the *United Nations Convention on the Law of the Sea, 1982*, stipulates the following:

> Declarations and statements
>
> Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

2. Mandatory declarations

Some treaties provide that certain declarations must be made by contracting States at the time of expressing their consent to be bound by the treaty or within a certain time period from the moment such consent has been expressed. The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*, provides in its article III:

> 1. Each State Party shall submit to the Organization, not later than 30 days after this Convention enters into force for it, the following declarations, in which it shall:
>
> (a) With respect to chemical weapons:
>
> (i) Declare whether it owns or possesses any chemical weapons, or whether there are any chemical weapons located in any place under its jurisdiction or control;
>
> (ii) Specify the precise location, aggregate quantity and detailed inventory of chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraphs 1 to 3, of the (iii)

[56] In the past, declarations were sometimes made in contemplation of the impending signature of the treaty, after its adoption. In such cases, the Secretary-General has considered such declarations to be made at the time of signature and has circulated their text accordingly. See those declarations that related directly to the implementation of the treaty included in the Final Act of the Conference that adopted the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989*. Such declarations were considered to be made upon signature and were circulated accordingly.

> Verification Annex, except for those chemical weapons referred to in sub-paragraph (iii);
>
> (iii) Report any chemical weapons on its territory that are owned and possessed by another State and located in anyplace under the jurisdiction or control of another State, in accordance with Part IV (A), paragraph 4, of the Verification Annex;
>
> (iv) Declare whether it has transferred or received, directly or indirectly, any chemical weapons since January 1946 and specify the transfer or receipt of such weapons, in accordance with Part IV (A), paragraph 5, of the Verification Annex;
>
> (v) Provide its general plan for destruction of chemical weapons that it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraph 6, of the Verification Annex;
>
> (b) With respect to old chemical weapons and abandoned chemical weapons: […]
>
> (c) With respect to chemical weapons production facilities: […]
>
> (d) With respect to other facilities: […]
>
> (e) With respect to riot control agents: […].[57]

Also the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, article 3 (2) stipulates:

> Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. Optional declarations

A treaty may provide for optional declarations. Many human rights treaties provide for States to make legally binding optional declarations. These declarations mostly relate to the competence of the human rights committees as independent treaty monitoring bodies responsible for overseeing the implementation of the treaty provisions. The Head of State, the Head of Government or the Minister for Foreign Affairs must sign such declarations.

[57] An additional example of a mandatory declaration is seen in the *Convention relating to the Status of Refugees, 1951* (article I B.1).

The *Convention against Torture and Other Cruel, Inhuman or Degrading, Treatment or Punishment, 1984*, provides for optional declarations recognizing the competence of the Committee against Torture to receive and consider communications from States claiming the non-observance of the Convention by another State party (article 21) or from or on behalf of individuals claiming to be victims of a violation by a State party of the provisions of the Convention. Articles 21 and 22 read:

Article 21

> 1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. […]
>
> 2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

> 1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
>
> […]
>
> 8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties

> with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Similarly, the *International Covenant on Civil and Political Rights, 1966*, provides for an optional declaration under article 41 recognizing the competence of the Human Rights Committee:

> 1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
>
> […]
>
> 2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Likewise, the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*, article 14 (1), (2) and (3) provides for declarations relating to the competence of the Committee on the Elimination of Racial Discrimination:

> 1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the

Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

[…][58]

Practice of the Secretary-General

Since interpretative declarations do not have the legal effect similar to that of a reservation, they need not to be signed by a formal authority as long as they clearly emanate from the State concerned. However, it is highly desirable that the Head of State, Head of Government or the Minister for Foreign Affairs signs such declaration in the event that the declaration turns out to be a reservation. In accordance with the practice of the Secretary-General, optional and mandatory declarations imposing legal obligations on the declarant must be signed by the Head of State, the Head of Government or the Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

J. NOTIFICATIONS

Notifications should be distinguished from interpretative declarations. Interpretative declarations are normally statements that make more explicit the

[58] The *Convention on the Elimination of All Forms of Discrimination against Women, 1979*, and the *Convention on the Rights of the Child, 1989*, also establish independent bodies (the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, respectively) that monitor how well States meet their obligations under those conventions. However, these two conventions do not provide for the optional acceptance of the competence of their respective committees. Furthermore, the Committee on Economic, Social and Cultural Rights, unlike the five other human rights treaty bodies, was not established by its corresponding Covenant, the *International Covenant on Economic, Social and Cultural Rights, 1966*, but created in 1985 by the Economic and Social Council of the United Nations.

meaning of a provision. Notifications are statements simply providing information required under a treaty. The *International Convention for the Suppression of the Financing of Terrorism, 1999*, article 7 (3) states:

> 3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

Likewise, article 45 (4) of the *Convention on Road Traffic, 1968,* stipulates:

> 4. On signing this Convention or on depositing its instrument of ratification or accession, each State shall notify the Secretary-General of the distinguishing sign it has selected for display in international traffic on vehicles registered by it, in accordance with Annex 3 to this Convention. By a further notification addressed to the Secretary-General, any State may change a distinguishing sign it has previously selected.

However, some notifications made under a treaty may create binding new or additional obligations. See the *International Covenant on Civil and Political Rights, 1966*. Pursuant to article 4, States may, in case of public emergency, suspend the application of certain provisions of the Covenant. In addition, the State using the right of derogation must notify the Secretary-General of such derogation. This is usually done by note verbale from the Permanent Mission of the notifying State to the United Nations to which the relevant domestic Decree is attached. Article 4 reads:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
>
> No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
>
> Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Also, article I B.(2) of the *Convention Relating to the Status of Refugees, 1951*, requires contracting States to notify the Secretary-General when extending their obligations under the Convention. Article I B. states:

> I B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either
>
> (a) "events occurring in Europe before 1 January 1951"; or
>
> (b) "events occurring in Europe or elsewhere before 1 January 1951";
>
> and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
>
> (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

K. ENTRY INTO FORCE

For a multilateral treaty to become binding under international law, it is necessary that the conditions for its entry into force be fulfilled.

The provisions of the treaty normally determine the manner in which and the date on which the treaty enters into force. If the treaty does not provide for a date or the method of entry into force, there is a presumption that the treaty enters into force as soon as the negotiating States have expressed their consent to be bound by the treaty (see article 24 (1) and (2) of the *Vienna Convention, 1969*). However, this method of entry into force is not generally used in modern multilateral treaties.

When a State expresses its consent to be bound by a treaty after the treaty has come into force, the treaty enters into force for such State on that date, unless the treaty provides otherwise (see article 24 (3) of the *Vienna Convention, 1969*). Accordingly, a treaty may be binding for certain States, following the entry into force provisions established therein but not for all participants. It will not be applicable to States, which, although entitled to become parties, have not yet expressed their consent to be bound.

The rule embodied in article 24 (2) of the *Vienna Convention, 1969* requiring the unanimous consent of the negotiating States, has never been applied for treaties

deposited with the Secretary-General, as it is very difficult to achieve universal participation.[59]

The depositary has functions of considerable importance relating to the provision of information as to the time at which the treaty enters into force.

> (See paragraphs 221 to 247 of the *Summary of Practice* and section 4.2 of the *Treaty Handbook*.)

1. Definitive entry into force of a treaty

A treaty may provide that it shall enter into force on the date when certain conditions are met, or that it shall enter into force on a specific date.

Upon a specified number, percentage or category of States depositing instruments expressing consent to be bound

a. To enter into force, most treaties require that a minimum number of States express their consent to be bound by a particular treaty. See article 36(1) of the *Framework Convention on Tobacco Control, 2003*:

> Entry into force
>
> 1. This Convention shall enter into force on the ninetieth day following the date of the deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

The required number can be very small (see the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956,* which needed two States for its entry into force). Generally, the number of instruments of consent to be bound for the entry into force of a treaty is much larger. The *Rome Statute of the International Criminal Court, 1998,* required sixty. A significant number of instruments of consent to be bound are specified to ensure broad acceptance of the treaty before its entry into force.

b. Treaties could provide that entry into force shall take place when a specified number of States have deposited their instruments expressing consent to be bound. Although this is a straightforward and uncomplicated formulation, it is not usual to find modern treaties that enter into force immediately upon deposit. See the *Agreement on the Establishment of the International Vaccine Institute, 1996,* article VIII (1):

[59] See the *Treaty establishing the European Economic Community, 1957* (article 247).

> This Agreement and the Constitution appended thereto shall come into force immediately after three instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General.[60]

c. Treaties normally stipulate that a certain period of time must elapse between the date on which the required number of instruments is deposited and the date of entry into force. A time period is often required to ensure that pre-conditions are met. This period may vary from thirty days to twelve months. The time so provided may give contracting States time to enact domestic legislation or to bring into effect implementing legislation previously enacted. It also gives the depositary time to notify contracting States of the forthcoming entry into force. The *Agreement on the Privileges and Immunities of the International Criminal Court, 2002*, article 35 states:

> 1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the tenth instrument of ratification, acceptance, approval or accession.

Likewise, the *United Nations Convention Against Transnational Organized Crime, 2000*, article 38 (1) states:

> Entry into force
>
> 1. This Convention shall enter into force on the ninetieth day after the date of the deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.[61]

d. Where the negotiating States considered that it is necessary to ensure that a range of pre-conditions are met prior to the entry into force of a treaty, treaties may provide for additional conditions to be satisfied in addition to the deposit of a specified number of instruments. Certain environmental and disarmament treaties require that specific categories of States be

[60] See also the *Agreement on the Importation of Educational, Scientific and Cultural Matters, 1950 (article 11);* the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956* (article 13); the *Protocol relating to the Status of Refugees, 1967* (article VIII); the *Agreement establishing the International Pepper Community, 1971* (article 12); the *Convention on the Registration of Objects Launched into Outer Space, 1974* (article 8); and the *Agreement Establishing the Asia-Pacific Institute for Broadcasting Development, 1977* (article 16).

[61] See also article 126 of the *Rome Statute for the International Criminal Court, 1998* (sixty days); article 87 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990* (three months); article 45 of the *United Nations Convention on the Assignment of Receivables in International Trade, 2001* (six months); and article 308 of the *United Nations Convention on the Law of the Sea, 1982* (twelve months).

included among the number of parties needed for the entry into in force. This ensures that States with significant interests in the subject matter, major financial contributors or those that are crucial for the implementation of the treaty become parties from the outset. This is also a factor that normally delays the entry into force of a treaty. Article 25 of the *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997,* provides:

> 1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
>
> 2. For the purposes of this Article, "the total carbon dioxide emissions for 1990 of the Parties included in Annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.
>
> 3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
>
> 4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization. [62]

The *Comprehensive Nuclear-Test-Ban Treaty, 1996,* cannot enter into force until the forty-four States named in annex 2 to the treaty have ratified the treaty. Annex 2 comprises States that formally participated in the 1996 session of the Conference on Disarmament, and that possess nuclear research and nuclear power reactors according to data compiled by the International Atomic Energy Agency. Article XIV provides:

> Entry into force
>
> 1. This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in

[62] The *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987* (article 16), requires that the minimum ratifications, accessions etc. for entry into force represent at least two thirds of the States responsible for the 1986 estimated global consumption of the controlled substances (CFCs).

> Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.
>
> 2. If this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary shall convene a Conference of the States that have already deposited their instruments of ratification upon the request of a majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 has been met and shall consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this Treaty.
>
> 3. Unless otherwise decided by the Conference referred to in paragraph 2 or other such conferences, this process shall be repeated at subsequent anniversaries of the opening for signature of this Treaty, until its entry into force.
>
> 4. All States Signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.
>
> 5. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30th day following the date of deposit of their instruments of ratification or accession.

The *European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), 1991,* in its article 10 (1) states:

> 1. This Agreement shall enter into force 90 days after the date on which the Governments of eight States have deposited an instrument of ratification, acceptance, approval or accession, provided that one or more lines of international combines network link, in a continuous manner, the territories of at least four of the States which have deposited such an instrument.

e. Some treaties exceptionally provide, as an additional condition, that those States that have expressed their consent to be bound also specifically agree on the entry into force. Thus, article 21 of the *Statutes of the International Centre for Genetic Engineering and Biotechnology, 1983,* states:

> 1. These Statutes shall enter into force when at least 24 States, including the Host State of the Centre, have deposited instruments of ratification or acceptance and, after having ascertained among themselves that sufficient financial resources are ensured, notify the Depositary that these Statutes shall enter into force.

Similarly, article 25 of the *Constitution of the United Nations Industrial Development Organization, 1979*, provides:

> 1. This Constitution shall enter into force when at least eighty States that had deposited instruments of ratification, acceptance or approval notify the Depositary that they have agreed, after consultations among themselves, that this Constitution shall enter into force.

f. Where specific geographical representation is considered important by the negotiating States, it is possible to stipulate this element. This approach ensures a deliberately wide geographical participation in the treaty. The *Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, 1984*, requires ratification by nineteen States and organizations within the geographical scope of the Protocol (Europe).[63] Article 10 of the Protocol states:

> Entry into Force
>
> 1. The present Protocol shall enter into force on the ninetieth day following the date on which:
>
> (a) instruments of ratification, acceptance, approval or accession have been deposited by at least nineteen States and Organizations referred to in article 8 paragraph 1 which are within the geographical scope of EMEP; and
>
> (b) the aggregate of the UN assessment rates for such States and Organizations exceeds forty per cent.
>
> 2. For each State and Organization referred to in article 8, paragraph 1, which ratifies, accepts or approves the present protocol or accedes thereto after the requirements for entry into force laid down in paragraph 1 above have been met, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or Organization of its instrument of ratification, acceptance, approval or accession.

The *International Agreement for the Establishment of the University for Peace and Charter of the University for Peace, 1982,* provides that the minimum of ten States required for the entry into force must represent at least two continents. Article 7 states:

> The present Agreement shall enter into force on the date on which it shall have been signed or acceded to by ten States from more than one continent. For States signing or acceding after the

[63] Accordingly, instruments deposited by Canada and the United States before the entry into force of the Protocol did not count for the purpose of the entry into force of the Protocol.

> entry into force, the Agreement shall enter into force upon the date of signature or accession.

On a specific date

a. Some treaties exceptionally provide for a set date of entry into force. This type of provision is quite unusual as securing the necessary instruments of consent to be bound by a given date may prove to be difficult. The *Agreement providing for the Provisional Application of the Draft International Customs Conventions on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, 1949,* stipulates in its article III (1):

> The present Agreement shall enter into force on 1 January 1950.

b. Usually, where a treaty specifies a date for its entry into force, it also provides for certain other conditions to be fulfilled. For example, the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987,* article 16 states:

> Entry into force
>
> 1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by this date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.
>
> 2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
>
> 3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

The required number of instruments for the entry into force of the Montreal Protocol was received prior to 1 January 1989. However, since the Protocol did not define "estimated global consumption of the controlled substances", the Secretary-General, as depositary, only notified

the entry into force of the Protocol after having obtained confirmation that, in the light of information provided by the parties, the number of instruments deposited exceeded the required figure. The information was confirmed prior to 1 January 1989 and the Protocol entered into force on that date, as provided for in article 16 (1).

In the case of the *Food Aid Convention, 1999*, entry into force would occur once a specified threshold of aid commitments was reached. Article XXIV (a) reads:

> This Convention shall enter into force on 1 July 1999 if by 30 June 1999 the Governments, whose combined commitments, as listed in paragraph (e) of Article III, equal at least 75% of the total commitments of all governments listed in that paragraph, have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, and provided that the Grains Trade Convention, 1995 is in force.[64]

The conditions for the entry into force may be even more complex. Thus, article 58 (1) and (3) of the *International Cocoa Agreement, 2001*, provides:

> Entry into force
>
> 1. This Agreement shall enter into force definitely on 1 October 2003, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.
>
> […]
>
> 3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement

[64] See also the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987* (article 16), which specifies a date for entry into force provided that certain conditions are fulfilled.

> into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.[65]

Commodity agreements have traditionally employed complex entry into force provisions, which reflect the need for a balance between exporter and importer (or producer and consumer) interests. This ensures that both are represented in adequate numbers, in particular the major ones, but makes commodity agreements difficult to bring into force definitively (see "Provisional entry into force of a treaty" below).

> (See the *Summary of Practice*, paragraph 236, for calculation by the depositary of date of initial entry into force of a treaty.)

Entry into force for a State after the treaty has entered into force

When a State gives its consent to be bound after the treaty has entered into force, it will enter into force for that State on the date of deposit of the instrument expressing consent, unless the treaty provides otherwise (see article 24(3) of the *Vienna Convention, 1969*).

Treaties normally include provisions for entry into force for a State when the treaty has already entered into force. Generally, they provide that the treaty will enter into force after a specified period has elapsed following deposit. This is often the same period as for the original entry into force of the treaty after receipt of the required number of instruments of ratification, acceptance, approval or accession. For example:

The *International Convention for the Suppression of the Financing of Terrorism, 1999*, article 26(2) reads:

> 2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Similarly, the *Rome Statute of the International Criminal Court, 1998*, article 126 (2):

> 2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

[65] See also the *International Coffee Agreement, 2000* (article 45).

Likewise, the *United Nations Convention on the Law of the Sea, 1982*, stipulates in article 308 (2):

> 2. For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.
>
> (See the *Summary of Practice*, paragraphs 244 through 247, for calculation of the date of entry into force for a State after the treaty has entered into force.)

2. Provisional entry into force of a treaty

Some treaties provide for provisional entry into force. In such cases, States that are ready to implement the obligations under a treaty may do so among themselves, without waiting for the completion of the requirements for its formal entry into force. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in such a manner.

Provisional entry into force is a mechanism usually employed in commodity agreements. Entry into force requirements of commodity agreements are so stringent that initially they are often brought into force provisionally followed by subsequent definitive entry into force.[66] This practical approach allows a greater opportunity for the treaty to enter into force earlier since the time period stipulated for the definitive entry into force is generally too short. It also allows those parties that provisionally apply the treaty to take part in the decision with regard to the definitive or provisional coming into force of the treaty. See for example article 58 the *International Cocoa Agreement, 2001*:

> Entry into force
>
> […]
>
> 2. This Agreement shall enter into force provisionally on 1 January 2002, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this

[66] See the entry into force process of the *International Natural Rubber Agreements, 1979, 1987* and *1994*, and the *International Coffee Agreements, 1962, 1968, 1976, 1983* and *1994*. Also note that from 1972 there have been six consecutive *International Cocoa Agreements*, five of which have not definitively entered into force.

> Agreement when it enters into force. Such Governments shall be provisional Members.
>
> 3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.
>
> 4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 57.[67]

In accordance with this provision, a meeting of Governments and an international organization held in London on 4 June 2003 decided to bring the Agreement into force as of 1 October 2003 among the Governments and the international organization that had deposited instruments of ratification, acceptance, approval or accession, or notifications of provisional application of the Agreement.

3. Entry into force of annexes, amendments, and regulations

Many multilateral treaties, particularly those concluded in recent years, have built-in amendment procedures for annexes, amendments[68] and regulations that include entry into force provisions. Commonly, such provisions also specify that the annexes, amendments, and regulations only enter into force for those parties that have accepted them or enter into force for all parties that have not objected to them.

a. Where parties require clear checks and balances on the entry into force of annexes and amendments of annexes, detailed procedures are incorporated

[67] Other examples of treaties with provisional entry into force clauses include the *International Sugar Agreement, 1992* (article 40); the *International Tropical Timber Agreement, 1994* (article 41); the *Grains Trade Convention, 1995, 1994* (article 28); the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997* (article 18); the *International Coffee Agreement, 2000* (article 45); and the *Agreement Establishing the Terms of Reference of the International Jute Study Group, 2001* (article 23).

[68] For a detailed discussion of amendment provisions see section III, "Amendment, Revision and Modification", below.

in treaties for this purpose. The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998*, article 22 reads:

> Adoption and amendment of annexes
>
> 1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.
>
> 2. Annexes shall be restricted to procedural, scientific, technical or administrative matters.
>
> 3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
>
> (a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;
>
> (b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of an additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (c) below; and
>
> (c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b) above.
>
> 4. Except in the case of Annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention.
>
> 5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex III:
>
> (a) Amendments to Annex III shall be proposed and adopted according to the procedure laid down in Articles 5 to 9 and paragraph 2 of Article 21;

(b) The Conference of the Parties shall take its decisions on adoption by consensus;

(c) A decision to amend Annex III shall forthwith be communicated to the Parties by the Depositary. The amendment shall enter into force for all Parties on a date to be specified in the decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force. [69]

Similarly, the *Convention for the Suppression of the Financing of Terrorism, 1999*, includes a provision for the amendment of the annex to the Convention. Article 23 (4) regulates the entry into force of amendments to the annex:

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

The *United Nations Convention against Transnational Organized Crime, 2000*, article 39 (4) and (5) provides:

Amendment

[…]

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the

[69] See also the *Stockholm Convention on Persistent Organic Pollutants, 2001* (article 22).

> provisions of this Convention and any earlier amendments that they have ratified, accepted or approved. [70]

b. The general tendency is for treaties to provide for entry into force of amendments (or annexes) only for those parties that have accepted them. This reflects the general reluctance of States to be bound by amendments that they have not accepted. This approach, however, often creates significant problems of interpretation and implementation since it could establish situations whereby States can be parties to different regimes under a single treaty.

The *Amendment to Article 43 (2) of the 1989 Convention on the Rights of the Child, 1995,* increasing the membership of the Committee on the Rights of the Child from ten to eighteen experts, entered into force when it was accepted by a two-thirds majority of States parties, on 18 November 2002 in accordance with article 50(2) of the Convention. Pursuant to article 50 (3) the amendments only bind those States parties that have notified their acceptance. This would have created an impossible situation where the Committee would have consisted of ten members for some States parties and eighteen members for others. A practical approach was taken by States parties to the Convention in this case and the amendment was deemed to bind all parties. Where amendment provisions are negotiated, it is important to anticipate this type of problem and draft the provisions accordingly.

Ideally, for the sake of clarity and simplicity, provisions regarding the entry into force of amendments (or annexes) should include either an automatic entry into force for all parties (e.g., the amendment shall bind all the parties after a specific number of parties, as of the date that the amendment was approved, have expressed their consent to be bound by the amendment) or an entry into force for all parties based on non-objection by any party (e.g., the amendment enters into force for all the parties after circulation of the proposed amendment to all parties and within a specified number of months none of the parties have objected to it).

The first type is reflected in the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, article VII (6):

> 6. Amendments shall enter into force for all States Parties 30 days after the deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.

[70] See also the *Agreement for Establishing the Asia-Pacific Institute for Broadcasting Development, 1977* (article 13), and the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* (article 17).

The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992,* article XV(3) states:

> 3. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all the States Parties referred to under subparagraph (b) below:
>
> > (a) When adopted by the Amendment Conference by a positive vote of a majority of all States Parties with no State Party casting a negative vote; and
> >
> > (b) Ratified or accepted by all those States Parties casting a positive vote at the Amendment Conference.

The second type is reflected in the *Agreement concerning the adoption of uniform conditions of approval and reciprocal recognition of approval for motor vehicle equipment and parts, 1958.* Regarding amendment of regulations, article 12 states:

> Article 12
>
> The Regulations to be annexed to this Agreement may be amended in accordance with the following procedure:
>
> 1. Any Contracting Party applying a Regulation may propose one or more amendments to it. The text of any proposed amendment to a Regulation shall be transmitted to the Secretary-General of the United Nations, who shall transmit it to the other Contracting Parties. The amendment shall be deemed to have been accepted unless within a period of three months following this notification a Contracting Party applying the Regulation has expressed an objection, in which case the amendment shall be deemed to have been rejected. If the amendment is deemed to have been accepted, it shall enter into force at the end of a further period of two months.
>
> 2. Should a country become a Contracting Party between the time of the communication of the proposed amendment by the Secretary-General and its entry into force, the Regulation in question shall not enter into force for that Contracting Party until two months after it has formally accepted the amendment or two months after the lapse of a period of three months since the communication to that Party by the Secretary-General of the proposed amendment.

The *Convention on Psychotropic Substances, 1971*, article 30 (2):

> 2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If, however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

The *Stockholm Convention on Persistent Organic Pollutants, 2001*, article 22 (3) reads:

> Adoption and amendment of annexes
>
> […]
>
> 3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
>
> (a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;
>
> (b) Any Party that is unable to accept an additional annex shall so notify the depositary, in writing, within one year from the date of communication by the depositary of the adoption of the additional annex. The depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of any additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and
>
> (c) On the expiry of one year from the date of the communication by the depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b).

Due to the need for organizational structures to be applicable to all parties, treaties establishing international organizations include amendment procedures automatically binding on all members. Accordingly, once an amendment has been approved by a specific percentage of members the amendment binds all, including those that did not vote for or ratify it. Article 108 of the *Charter of the United Nations* reads:

> Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional

> processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council. [71]

c. Exceptionally, the amendment itself may contain the entry into force provision, generally to expedite its own entry into force. Article 3 of the *Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, 1999*:

> 1. This Amendment shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled. [72]

This particular situation is exceptional. Concerned that the ozone hole had reached record proportions the States involved wished to see a less onerous procedure by which control measures could quickly be extended to new ozone-depleting substances. They intended that the amendment would enter into force quickly and drafted the amendment's entry into force provision accordingly.

Determining the date when the amendment or annex enters into force

Determining the date of entry into force of amendments and annexes has caused in the past difficulties for the Secretary-General as depositary.

a. Some treaties provide for entry into force when a specified proportion (e.g., three-quarters, two-thirds) of all the parties has deposited their instruments expressing their consent to be bound (e.g., acceptance). Often, these treaties do not specify whether the number of acceptances is calculated on the basis of the number of parties at the time of adoption of the amendment or at the time of its acceptance. This type of clause creates confusion for States.

The *Convention against Torture and other Cruel, Inhuman or Degrading, Treatment or Punishment, 1984*, provides in article 29(2):

> 2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two-thirds of the States Parties

[71] See also the *Constitution of the International Labour Organization, 1946* (article 36); the *Constitution of the World Health Organization, 1946* (article 73); the *Convention establishing the World Intellectual Property Organization, 1967* (article 17); and the *Statute of International Atomic Energy Agency, 1956* (article 18).

[72] See also the *Amendments to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer* of *29 June 1990* (article 2*);* of *25 November 1992* (article 3); and of *17 September 1997* (article 3).

> to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

Likewise, the *Convention on the Rights of the Child, 1989*, which contains additional complexities whereby the approval of the General Assembly as well as a two-thirds majority of the States parties are required for entry into force of amendments, does not specify when the two-thirds proportion is to be calculated. Specifically, article 50 (2), reads:

> 2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

See also the *Amendments to the Agreement Establishing the Asia-Pacific Institute for Broadcasting Development, 1999*, article 14(1):

> 1. […] Amendments shall, subject to paragraph 2 of this article enter into force for all Contracting Parties three months after their acceptance by a two-thirds majority of the Contracting Parties.

Similar wording appears in the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992,* article 21 (4):

> 4. An amendment to the present Convention shall be adopted by consensus of the representatives of the Parties to this Convention present at a meeting of the Parties, and shall enter into force for the Parties to the Convention which have accepted it on the ninetieth day after the date on which two thirds of those Parties have deposited with the Depositary their instruments of acceptance of the amendment. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of acceptance of the amendment.[73]

Equally, using a seven-eighths proportion, the *Rome Statute of the International Criminal Court, 1998*, article 121, paragraph 4, provides:

> 4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after the instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

[73] Almost identical language is found in the *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999* (article 18).

Entry into force provisions should specify the basis on which established percentages are to be calculated in order to avoid confusion relating to the time of entry into force. When a treaty is silent on this matter, the practice of the Secretary-General as depositary is to calculate the number of acceptances on the basis of the number of parties to the treaty at the time of acceptance. This practice is referred to as the "moving target" or the "current time" approach.

(See also the *Treaty Handbook*, section 4.4.3.)

b. A more practical approach is reflected in certain treaties that employ a formula that includes either a consistent number of votes required for all the amendments or a proportion with a clear statement of the date of calculation of the proportion. This is a preferred approach. The *Agreement on the Privileges and Immunities of the International Criminal Court, 2002*, article 36 (5) states:

> 5. An amendment shall enter into force for States Parties which have ratified or accepted the amendment sixty days after two thirds of the States which were Parties at the date of adoption of the amendment have deposited instruments of ratification or acceptance with the Secretary-General.

The *Amendment to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, 1999*, article 3 (1) provides:

> 1. This Amendment shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

L. REGISTRATION AND PUB LICATION

Pursuant to Article 102 of the *Charter of the United Nations*, States Members of the United Nations have a legal obligation to register treaties and international agreements entered into after the entry into force of the *Charter* with the

Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements.[74] Article 102 of the *Charter* provides:

> 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.

The objective of Article 102 is to ensure that all treaties and international agreements remain in the public domain and thus contribute to eliminating secret diplomacy. This provision, which could be traced to Article 18 of the Covenant of the League of Nations, was designed to eliminate secret diplomacy, a factor that was considered to be a major cause of international instability. A treaty or an international agreement cannot be invoked before the International Court of Justice (ICJ) or any other organ of the United Nations if it is not registered.[75]

Registration provisions are more often found in older treaties than in treaties drafted more recently. The *Protocol to amend the 1921 Convention for the Suppression of the Traffic in Women and Children and the 1933 Convention for the Suppression of the Traffic in Women of Full-Age, 1947*, provides in article VI:

> In accordance with paragraph 1 of Article 102 of the Charter of the United Nations and the regulations pursuant thereto adopted by the General Assembly, the Secretary-General of the United Nations is authorized to effect registration of the present Protocol and the amendments made in the Conventions by this Protocol on the respective dates of their entry into force, and to publish the Protocol and the amended Conventions as soon as possible after registration.[76]

Similarly, article XIX of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, explicitly provides:

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[74] See General Assembly Regulations to give effect to Article 102 (*Treaty Series*, volume 859/860, p. VIII) and General Assembly resolution 97(I) of 14 December 1946, as amended by resolutions 364 B (IV) of 1 December 1949; 482 (V) of 12 December 1950; 33/141 of 19 December 1978; and 52/153 of 15 December 1997.

[75] It is noted that, the ICJ in the case of *Qatar* v. *Bahrain* considered the terms of the 1987 double Exchange of Letters between Qatar and Saudi Arabia and between Bahrain and Saudi Arabia, a treaty that was not registered. The ICJ, in the same case, accepted as a treaty Minutes from a meeting held in December 1990 that were registered by one of the parties less than two weeks before application to the ICJ. The ICJ relied on the Exchange of Letters and the Minutes to decide on the question of its own jurisdiction over the dispute (*Qatar* v. *Bahrain*, 1994 I.C.J. 112).

[76] See also the *Protocol Amending the 1904 International Agreement for the Suppression of the White Slave Traffic, 1904, and the 1910 International Convention for the Suppression of the White Slave Traffic, 1949* (article 7); and the *Protocol Amending the 1926 Slavery Convention, 1953* (article 4).

> The Present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Also the *Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950,* article XVIII states:

> 1. In accordance with Article 102 of the Charter of the United Nations, this Agreement shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Likewise, article 21 of the *Convention on the Reduction of Statelessness, 1961,* provides:

> This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

Given the existence of Article 102 of the *Charter of the United Nations* and the fact that the United Nations registers *ex officio* multilateral treaties that designate the Secretary-General as depositary, the inclusion of a registration provision in a multilateral treaty to be deposited with the Secretary-General is unnecessary (see the *Vienna Convention, 1969,* articles 77 (1) (g) and 80).

> (Extensive substantive and procedural information on registering and filing and recording treaties may be found in the *Treaty Handbook*, sections 5 and 6.)

M. AUTHENTIC TEXTS

Most multilateral treaties are concluded in more than one language. Accordingly, those treaties often specify the languages of the authentic texts.

Treaties concluded under the auspices of the United Nations normally provide in their final clauses that the texts are authentic in all the official languages of the United Nations.[77] Today, the official languages are Arabic, Chinese, English, French, Russian and Spanish. This is the current practice. See article 38 of the *Framework Convention on Tobacco Control, 2003,* which reads:

Authentic texts

> The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

[77] The *Convention on the Privileges and Immunities of the United Nations, 1946,* reflecting the situation of the early years of the United Nations is authentic in English and French only.

In the case of treaties adopted by United Nations regional commissions, the authentic texts are generally in the official languages of the commissions concerned.[78] Taking into account recent developments in the depositary practice and consistent with ST/SGB/2001/7, the Secretary-General as depositary strongly insists that every effort shall be made to ensure that the texts of treaties to be deposited with the Secretary-General are concluded only in the official languages of the Organization. Any deviation from this practice could set an unmanageable precedent in an Organization with 191 members.

It is rare that treaties do not contain provisions on the authentic texts.[79] It is a desirable practice that they do contain such provisions.

II. APPLICATION OF TREATIES

A. TERRITORIAL LIMITATIONS ON APPLICATION OF TREATIES

The basic principle is that a treaty will be binding upon a State in respect to its entire territory. This principle is stated in article 29 of the *Vienna Convention, 1969*:

Territorial scope of treaties

> Unless a different intention appears from the treaty or it is otherwise established, a treaty is binding upon each party in respect to its entire territory.

This basic principle becomes difficult to apply in certain situations. Parts of the territory of a State may, under its domestic law, be subject to a separate legal regime. This may be the case of a metropolitan territory as compared to its non-metropolitan territories, colonies, overseas territories or dependencies. When such non-metropolitan territories exist, it may be difficult to apply the provisions of a treaty to them in the same manner as to the metropolitan territory. There may be situations where extensive consultations are required with such non-metropolitan territories due to the existence of a quasi-independent legal regime in such territories. The same may apply to non-autonomous or non-independent territories whose foreign relations are under the international responsibility of certain States.

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[78] As an exception to this general rule, the Secretary-General accepted the use of German also as an authentic text language for the *European Agreement concerning the International Carriage of Goods by Inland Waterways, 2000*. However, this was stated by the Secretary-General to be a case that would not set a precedent. The Secretary-General could refuse to accept a treaty in deposit if it were concluded in languages other than the official languages.

[79] See the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950*.

Many former territories are now independent, rendering the instances of application of treaties to non-metropolitan territories fewer and less complex. However, a number of former colonial powers still maintain distant colonies.

1. Provisions on the optional extension of territorial application

Provisions for the optional extension of territorial application was a common practice in multilateral treaties before the modern period of decolonization. Article XII of the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*, reads:

> Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.[80]

Article 40 of the *Convention relating to the Status of Refugees, 1951*, provides:

> 1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
>
> 2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
>
> 3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.[81]

Furthermore, article 48(1) of the *International Coffee Agreement, 2000*, provides:

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[80] See also the *Convention on the Intergovernmental Maritime Consultative Organization, 1948* (article 58); the *Agreement Providing for the Provisional Application of the Draft International Customs Convention on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road, 1949* (article II); the *Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950* (article XIII); and the *Protocol to the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), 1978* (article 7).

[81] See also the *Convention relating to the Status of Stateless Persons, 1954* (article 36).

> Any Government may, at the time of signature or deposit of an instrument of ratification, acceptance, approval, provisional application or accession, or at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall extend to any of the territories for whose international relations it is responsible; this Agreement shall extend to the territories named therein from the date of such notification.

2. Provisions on the optional exclusion from territorial application

Where it was considered more practical to exclude territories from the application of a treaty, provision was made, especially in treaties pre-dating 1960, for the optional exclusion of all or some territories of a State from the application of the treaty. Article 12 of the *Convention on the Recovery Abroad of Maintenance, 1956,* states:

> Territorial application
>
> The provisions of this Convention shall extend or be applicable equally to all non-self-governing, trust or other territories for the international relations of which a Contracting Party is responsible, unless the latter, on ratifying or acceding to this Convention, has given notice that the Convention shall not apply to any one or more of such territories. Any Contracting Party making such a declaration may, at any time thereafter, by notification to the Secretary-General, extend the application of the Convention to any or all of such territories.[82]

3. Provisions requiring exercise of territorial application to all territories

Consistent with article 29 of the *Vienna Convention, 1969,* a State becomes party to a treaty on behalf of all its territories. Some treaties specifically provide for the application to all territories. See article IX of the *Convention on the International Right of Correction, 1953*:

> The provisions of the present Convention shall extend to or be applicable equally to a contracting metropolitan State and to all the territories, be they Non-Self Governing, Trust or Colonial Territories, which are being

[82] See also the *Havana Charter for an International Trade Organization, 1948* (article 104); the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, 1949* (article XIV); and the *Convention on the Declaration of Death of Missing Persons, 1950* (article 13).

administered or governed by such metropolitan State.[83]

In view of article 29 of the *Vienna Convention, 1969*, which codified customary international law, a provision of this nature would be superfluous.

4. Provisions on territorial application where consent of a non-metropolitan territory may be required by domestic law

Where the previous consent of non-metropolitan territories may be required by the domestic law of a prospective State party, a treaty may be drafted to accommodate this need. Article 27 of the *Convention on Psychotropic Substances, 1971*, provides:

> The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such territory is required by the Constitution of the Party or of the territory concerned or required by custom. In such case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.[84]

5. Absence of provisions on territorial application

Most treaties do not contain specific territorial application clauses. In principle, the absence of a territorial clause obliges a State to apply the treaty to its entire territory (see article 29 of the *Vienna Convention, 1969*).

Certain States in some limited circumstances may not wish to apply a treaty to their entire territory. A practice has been developed by which such States specify to which of their overseas territories the treaty will apply. When becoming a party to the treaty, such a State includes in its instrument a statement to the effect

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[83] See also the *Articles of Agreement of the International Monetary Fund, 1945* (article XXXI, section 2, (g)); *Articles of Agreement of the International Bank for Reconstruction and Development, 1945* (article XI, section 2, (g)); and the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950* (article 23).

[84] See also the *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 1953* (article 20); the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956* (article 12); and of the *Single Convention on Narcotic Drugs, 1961* (article 42).

that the treaty (or some of its provisions) either applies only to the metropolitan territory, or that it extends also to certain territories.

Exceptionally, a State exercising the foreign affairs responsibility for one of its territories may declare that a treaty does not apply to that territory.

Practice of the United Kingdom, the Netherlands, New Zealand and Denmark

United Kingdom.[85] When expressing consent to be bound, the United Kingdom may declare in writing to the depositary to which, if any, of its territories the treaty will extend. If the instrument expressing consent to be bound refers only to the United Kingdom of Great Britain and Northern Ireland, it applies only to the metropolitan territory.

The Netherlands. The Netherlands tends to make declarations regarding territorial application rather than territorial exclusion. Specifically, the Netherlands often declares in its instrument expressing consent to be bound that such declaration is "[f]or the Kingdom in Europe, the Netherlands Antilles and Aruba." See the ratification of the Netherlands dated 22 May 2002 to the *Optional Protocol to the 1979 Convention on the Elimination of all Forms of Discrimination against Women, 1999*, and its acceptance dated 7 February 2002 to the *Convention on the Safety of United Nations Associated Personnel, 1994*. The Netherlands accepted the *Convention on the Rights of the Child, 1989*, for the Kingdom in Europe on 6 February 1995, and subsequently extended territorial application to Netherlands Antilles on 17 December 1997 and to Aruba on 18 December 2000.[86]

New Zealand. New Zealand makes declarations of territorial application and territorial exclusion on a case-by-case basis. For example, New Zealand, by communication to the Secretary-General dated 10 April 2002, declared that "[c]onsistent with international law, New Zealand regards all treaty actions as extending to Tokelau as a non-self-governing territory of New Zealand unless express provision to the contrary is included in the relevant treaty instrument." When New Zealand ratified on 19 July 2002 the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000*, it declared that the ratification would not extend to Tokelau.

[85] See A. Aust, *Modern Treaty Law and Practice* (2000), p. 166.

[86] The Government of the Netherlands informed the Secretary-General on 30 December 1985 that "the island of Aruba which was part of the Netherlands Antilles would obtain internal autonomy as a separate country within the Kingdom of the Netherlands as of 1 January 1986." The treaties concluded by the Kingdom, which applied to the Netherlands Antilles, including Aruba, continued to apply to the Netherlands Antilles (of which Aruba is no longer a part) and to Aruba, after 1 January 1986.

Denmark. When expressing its consent to be bound, Denmark tends to include the entire Kingdom of Denmark. In a communication received on 22 July 2003, the Government of Denmark informed the Secretary-General that "... Denmark's ratifications normally include the entire Kingdom of Denmark including the Faroe Islands and Greenland." On occasion the Government of Denmark has made territorial exclusions. For example, when the Government of Denmark ratified the *Rome Statute of the International Criminal Court, 1998*, on 21 June 2001 it declared that "[u]ntil further notice, the Statute shall not apply to the Faroe Islands or Greenland."

A practice has developed in relation to the People's Republic of China whereby it applies to a specific region a treaty that was applicable under a previous controlling power even though the People's Republic of China itself is not party to such a treaty. Such is the case of the People's Republic of China in respect of Hong Kong and Macao. When Hong Kong became a Special Administrative Region under the sovereignty of the People's Republic of China, the Government of the People's Republic of China transmitted to the Secretary-General a communication relating to the status of Hong Kong from 1 July 1997.[87] Similarly, the Government of the People's Republic of China transmitted to the Secretary-General a communication relating to the status of Macao from 20 December 1999.[88] Attached to the communications were two annexes: a) Annex I listing the treaties to which China was then a party that would apply with effect from 1 July 1997 to the Hong Kong Special Administrative Region and from 20 December 1999 to the Macao Special Administrative Region, respectively, and b) Annex II listing the treaties to which China was not a party and which applied to Hong Kong before 1 July 1997 that would continue to apply to the Hong Kong Special Administrative Region, and which applied to Macao before 20 December 1999 that would continue to apply to the Macao Special Administrative Region, respectively. For treaties that were not listed on either Annex it is necessary to determine whether China made a declaration specifying that the treaty would apply to the Hong Kong Special Administrative Region or the Macao Special Administrative Region or both.

(For the Secretary-General's practice regarding territorial application clauses, see paragraphs 263 to 285, of the *Summary of Practice*.)

[87] See the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed on 19 December 1984" in the historical information, note 2 under "China", in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER.E/21), status as at 31 December 2002.

[88] See the "Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987" in the historical information, note 3 under "China", in the *Status of Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER.E/21), status as at 31 December 2002.

6. Federal clauses

Declarations of territorial application are distinct from declarations made under "federal clauses" in treaties whose subject matter falls within the legislative jurisdiction of constituent States, provinces or other territorial units. Article 35 (1) and (2) of the *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, provide:

> Application to territorial units
>
> 1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
>
> 2. Such declarations are to state expressly the territorial units to which this Convention extends.[89]

Federal clauses are mostly used in treaties on commercial law, private law or private international law, such as those elaborated by the United Nations Commission on Trade Law (UNCITRAL) and the Institute for the Unification of Private Law (UNIDROIT).

B. APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT MATTER

Article 30 of the *Vienna Convention, 1969*, provides:

> Application of successive treaties relating to the same subject-matter
>
> 1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
>
> 2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
>
> 3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation

[89] See also the *International Convention on Arrest of Ships, 1999* (article 13); and the *United Nations Convention on Contracts for the International Sale of Goods, 1980* (article 93).

> under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.
>
> 4. When the parties to the later treaty do not include all the parties to the earlier one:
>
> > (a) as between States parties to both treaties the same rule applies as in paragraph 3;
> >
> > (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
>
> 5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

Article 30 of the *Vienna Convention, 1969,* makes a distinction between successive treaties relating to the same subject matter concluded between the same parties and successive treaties relating to the same subject matter between different parties.

In the case of successive treaties relating to the same subject matter concluded among the same parties, the principle of *lex posterior derogat priori* applies.[90] Accordingly, when the parties to the earlier treaty are also parties to the later treaty but the earlier treaty is not terminated or suspended under article 59 of the *Vienna Convention, 1969*,[91] the earlier treaty applies to the extent that its provisions are compatible with those of the later treaty. Thus, unless there is evidence of a contrary intention, the parties are presumed to have intended to terminate or modify the earlier treaty when they conclude a subsequent treaty that is incompatible with the earlier one.

In the case of successive treaties relating to the same subject matter between different parties, the same rule applies when the parties to the later treaty do not include all the parties to the earlier one, but only among parties to both treaties.

[90] Article 30 of the *Vienna Convention, 1969,* refers to successive treaties "relating to the same subject matter", which is interpreted as treaties having the same general character. However, when a treaty shares the special character with respect to another treaty, in the event of conflict, the *lex specialis* prevails, unless that treaty expresses an intention, express or implied, that it should be otherwise.

[91] See article 59 of the *Vienna Convention, 1969,* on termination or suspension of the operation of a treaty implied by conclusion of a later treaty.

As between a party to both treaties and a party to only one of the treaties, the treaty that both are parties to governs their mutual rights and obligations.[92]

Provisions on the application of successive treaties

Where negotiating States wish to establish the priority in the application of successive treaties on the same subject-matter, final clauses will contain provisions on the relationship of the new treaty and existing or future treaties on the same subject matter.

The issue of the relationship between successive treaties increasingly arises because of the greater number and complexity of treaties entered into by States. The general rules specified in article 30 of the *Vienna Convention, 1969,* may not be sufficient to address all the problems arising with respect to the priority of the application of a particular treaty. Accordingly, parties to a treaty may decide to address the relationship between the provisions of that treaty and those of any other treaty relating to the same subject matter, including in the treaty in question clauses or provisions that determine the priority in the application of successive treaties. One way to accomplish this is to include provisions in the treaty specifying its relationship to a prior treaty, a future treaty or any treaty, past or future.

The *Charter of the United Nations* establishes the priority of the provisions of the Charter over any other international agreement, existing or future, as set forth in Article 103:

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Also a treaty may specify that all or some of its provisions shall prevail over previously concluded treaties in general or in relation to a specific treaty. The *Food Aid Convention, 1999,* in its article XXVI, provides:

> International Grains Agreement
>
> This Convention shall replace the Food Aid Convention, 1995, as extended, and shall be one of the constituent instruments of the International Grains Agreement, 1995.

The *United Nations Convention on the Law of the Sea, 1982,* precisely explains its relationship to other treaties in article 311:

[92] Without prejudice to article 41 relating to "Agreements to modify multilateral treaties between certain of the parties only" and article 59 on "Termination or suspension of the operation of a treaty implied by conclusion of a later treaty" of the *Vienna Convention, 1969*.

> 1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
>
> 2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
>
> 3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

Where negotiating States do not wish the provisions of the treaty in question to prevail over a previously concluded treaty or even a later treaty, they may specify that some or all of the provisions of the treaty shall not prevail. For example, the *United Nations Convention on the Assignment of Receivables in International Trade, 2001*, article 38 (1) reads as follows:

> Conflicts with other international agreements
>
> 1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

The *United Nations Convention on Contracts for the International Sale of Goods, 1980*, article 90 provides:

> This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties, to such agreement.

The *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, 1998*, article 10 provides:

> Relationship to Other International Agreements
>
> This Convention shall not affect the rights and obligations of States Parties deriving from other international agreements or international law.

Where existing higher standards are to be preserved, a treaty may specify that there should be no conflict with other treaties that provide for such higher standards. These provisions are most often found in human rights and disarmament treaties. The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*, article XIII states:

> Relation to other international agreements
>
> Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and under the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972.

The *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, provides in article 2:

> Relationship with other international agreements
>
> Nothing in this Convention or its annexed Protocols shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law applicable in armed conflict.

The *Convention on the Elimination of all Forms of Discrimination against Women, 1979*, states in article 23:

> Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:
>
> (a) In the legislation of a State Party; or
>
> (b) In any other international convention, treaty or agreement in force for that State.

C. SETTLEMENT OF DISPUTES

The Manila Declaration on the Peaceful Settlement of Disputes, part I.9, states, *inter alia*, that States should include "in bilateral agreements and multilateral

conventions, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof."[93]

Multilateral treaties normally contain detailed dispute resolution provisions. Some contain only elementary provisions. If a dispute, controversy or claim were to arise out of a treaty (for example, due to breach, error, fraud, performance issues, etc.) these provisions become extremely important. Although not common, dispute resolution provisions have been relied upon to resolve important issues by States parties to treaties.

Treaties may provide for various dispute resolution mechanisms such as negotiation, consultation, conciliation, mediation and good offices, panel procedures, arbitration or judicial settlement, such as recourse to the International Court of Justice.

Usually the first resort is to non-formal means of dispute resolution with judicial settlement being the final resort.

Parties to a treaty may try to resolve a dispute arising under that treaty by direct negotiation or consultation amongst themselves in private, usually through diplomatic channels. This allows great flexibility, with the parties controlling the process. In fact, the vast majority of disputes are resolved in this manner away from the limelight. Mediation and good offices involve a third person who facilitates a compromise or provides impartial advice to help resolve the dispute. Two attributes of arbitration and judicial settlement are (1) a prior agreement to submit disputes to a third party for a decision and (2) a decision by the third party that is legally binding on the parties. In many cases parties favour arbitration rather than judicial settlement because the parties have more control over the process and it is expeditious. The advantages of the judicial settlement mechanism include having the court or tribunal and procedures already established as well as judges available to hear the disputes. Recourse to the International Court of Justice has the added benefit to the parties of being funded by member contributions to the United Nations budget so that parties do not shoulder the full costs of the court (as they would with an arbitration tribunal and with other judicial bodies).

Article 33 of the *Charter of the United Nations* enunciates the basic principle enshrined in Article 2 (3) of the *Charter* that disputes must be resolved through pacific means and lists the most common dispute settlement methods:

> 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

[93] See General Assembly resolution 37/10 of 15 November 1982.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

a. Negotiation followed by arbitration with subsequent recourse to the International Court of Justice is reflected in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*. Its article 92 provides:

> 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
>
> 2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
>
> 3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.[94]

A policy-oriented solution through the intervention of the Assembly of Parties prior to recourse to the formal mechanisms is reflected in the *Rome Statute of the International Criminal Court, 1998*. Here a dispute must be resolved by negotiation during a three-month period followed by referral to the Assembly of States parties with subsequent referral to the International Court of Justice. Article 119 of the Statute provides:

> 1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
>
> 2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of

[94] See also the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (article 29); the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (article 30); and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000* (article 20).

> the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Some treaties also allow for a wide range of dispute mechanisms. For example, the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,* provides in article 32:

> Settlement of Disputes
>
> 1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.
>
> 2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.
>
> 3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.
>
> 4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any party having made such a declaration.
>
> 5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

b. While most dispute resolution mechanisms are found in the final clauses of treaties, provisions for settlement of disputes may be found elsewhere in the treaty instead. See the *International Coffee Agreement, 2000,* which regulates the settlement of disputes in its chapter XIII entitled "Consultations, disputes and complaints" and not in its chapter XIV "Final provisions." Article 42 of this Agreement provides:

Disputes and complaints

(1) Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any Member party to the dispute, be referred to the Council for decision.

(2) In any case where a dispute has been referred to the Council under the provisions of paragraph (1) of this Article, a majority of Members, or Members holding not less than one third of the total votes, may require the Council, after discussion, to seek the opinion of the advisory panel referred to in paragraph (3) of this Article on the issues in dispute before giving its decision.

(3) (a) Unless the Council unanimously agrees otherwise, the advisory panel shall consist of:

(i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) two such persons nominated by the importing Members; and

(iii) a chairman selected unanimously by the four persons nominated under the provisions of sub-paragraphs (i) and (ii) or, if they fail to agree, by the Chairman of the Council.

(b) Persons from countries whose Governments are Contracting Parties to this Agreement shall be eligible to serve on the advisory panel.

(c) Persons appointed to the advisory panel shall act in their personal capacities and without instructions from any Government.

(d) The expenses of the advisory panel shall be paid by the Organization.

(4) The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.

(5) The Council shall rule on any dispute brought before it within six months of submission of such dispute for its consideration.

(6) Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council which shall make a decision on the matter.

(7) No Member shall be found to have been in breach of its obligations under this Agreement except by a distributed simple majority vote. Any finding that a Member is in breach of its obligations under this Agreement shall specify the nature of the breach.

(8) If the Council finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to other enforcement measures provided for in other Articles of this Agreement, by a distributed two-thirds majority vote, suspend such Member's voting rights in the Council and its right to have its votes cast in the Executive Board until it fulfils its obligations, or the Council may decide to exclude such Member from the Organization under the provisions of Article 50.

(9) A Member may seek the prior opinion of the Executive Board in a matter of dispute or complaint before the matter is discussed by the Council.

The *United Nations Convention against Transnational Organized Crime, 2000,* establishes a regime for the settlement of disputes in its article 35:

Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Part XV (articles 279 through 299) of the *United Nations Convention on the Law of the Sea, 1982*, contains very detailed voluntary and compulsory methods of settlement of disputes, including the jurisdiction of the International Tribunal for the Law of the Sea established by the Convention. Part XV requires that States parties settle any dispute between them concerning the interpretation or application of the Convention by peaceful means in accordance with article 2 (3) of the *Charter of the United Nations* and by the means indicated in article 33 (1) of the *Charter*. If no settlement is reached, the dispute is submitted at the request of any party to the dispute to a court or tribunal having jurisdiction in this regard in accordance with article 286. Article 287(1) of the Convention defines those courts or tribunals as:

> (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI [of the Convention];
>
> (b) the International Court of Justice;
>
> (c) an arbitral tribunal constituted in accordance with Annex VII of the Convention;
>
> (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

Compliance mechanisms

In certain areas of international law there is a trend toward assisting the parties with implementing treaty obligations rather than just strictly enforcing the treaty provisions and for treaty monitoring compliance rather than dispute resolution. This is evident in the human rights area and in the environmental field.

Some treaties, such as environmental treaties contain complex provisions for monitoring compliance and providing assistance to the parties with a preventative view to avoiding disputes. The following three treaties illustrate this point. The reporting requirements, however, are handled by the treaty secretariats, not the depositary.

The *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, compliance regime consists of a compliance committee made up of a facilitative branch and an enforcement branch. The facilitative branch provides advice and assistance to parties to promote compliance. This branch also provides "early-warning" of cases where a party is in danger of not meeting its emissions targets. In response to problems, the facilitative branch may make recommendations and also mobilize financial and technical resources to help the parties comply. Each party must submit a national communication to demonstrate its compliance with its commitments under the protocol. Expert

review teams analyse the information and prepare a report to the conference of parties. There is a Subsidiary Body for Scientific and Technological Advice as well as a Subsidiary Body for Implementation. Additionally, a financial mechanism provides financial resources on a grant or concessionary basis including for the transfer of technology.

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989,* contains specific provisions for the monitoring of implementation and compliance. A number of articles in the Convention oblige parties to take appropriate measures to implement and enforce their provisions, including measures to prevent and punish conduct in contravention of the Convention. In order to assist countries to manage or dispose of their wastes in an environmentally sound way, the secretariat cooperates with national authorities in developing national legislation, setting up inventories of hazardous wastes, strengthening national institutions, assessing the hazardous waste management situation, and preparing hazardous waste management plans and policy tools. It also provides legal and technical advice to countries in order to solve specific problems related to the control and management of hazardous wastes. Through training and technology transfer, developing countries and countries with economies in transition gain the skills and tools necessary to properly manage their hazardous wastes.

In the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987,* emphasis is placed on the sharing of information among the parties, aided by the Ozone Secretariat. Parties cooperate regarding research, development, public awareness and exchange of information. There are requirements to transfer technology and to take into account in particular the needs of developing countries. A financial mechanism provides financial and technical cooperation, including the transfer of technologies.

In the human rights field, committees or "treaty monitoring bodies" often monitor implementation of treaties. These committees are composed of independent experts of recognized competence in the field of human rights who are elected by States parties.

III. AMENDMENT, REVISION AND MODIFICATION

Treaty provisions may be altered by agreement of the parties in accordance with the procedure set out in the treaty itself or pursuant to customary international law, as codified by the *Vienna Convention, 1969*. The *Vienna Convention, 1969,* contains the rules governing amendments in articles 39 to 41.

> (See also *Summary of Practice*, paragraphs 248 through 255, and *Treaty Handbook*, section 4.4.)

The provisions of a treaty may be altered/modified following the procedure indicated in the treaty in question. The parties may also negotiate a new treaty. "Amendments" have at times been considered legally distinct from "modifications" or "revisions" although the distinction is frequently blurred.

The *Vienna Convention, 1969,* distinguishes between "amendment of multilateral treaties" and "modification between certain parties only".

The term "revision" often refers (but not always) to a general alteration affecting the treaty as a whole, as opposed to an amendment that partially alters some of the treaty provisions. However, the practice also suggests that the terms "amendment", "modification" and "revision" have been often used interchangeably. Article 236 *the European Economic Community Treaty, 1957,* provided:[95]

> The Government of any Member State or the Commission may submit to the Council proposals for the revision of this Treaty.
>
> If the Council, after consulting the Assembly and, where appropriate, the Commission, expresses an opinion in favour of the calling of a conference of representatives of the Governments of member States, such conference be convened by the President of the council for the purpose of determining in common agreement the amendments to be made to this Treaty.
>
> Such amendments shall enter into force after being ratified by all Member States in accordance with their respective constitutional rules.

The *Treaty on European Union, 1992,* states:

> Article N
>
> 1. The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.
>
> If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.
>
> The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

[95] Article 236 was repealed.

2. A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B.[96]

A. AMENDMENT

1. Amendment in accordance with the provisions of the treaty

a. The text of a treaty may be altered in accordance with its own amendment provisions. Most contemporary treaties include mechanisms for their amendment.[97] The amendment procedure within a treaty usually contains provisions governing the mode of adoption of amendments and its entry into force.[98] Articles 108 and 109 of the *Charter of the United Nations* provide:

> Amendments
>
> Article 108
>
> Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.
>
> Article 109
>
> 1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
>
> 2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in

[96] The *European Economic Community Treaty, 1957* (as amended), became the *Treaty establishing the European Community* following the amendments to the Community Treaties made by the *Treaty on European Union, 1992* ("Treaty of Maastricht").

[97] Some treaties do not provide for specific amendment procedures. The *United Nations Convention on the Assignment of Receivables in International Trade, 2001,* in article 47 only provides that, "[a]t the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it." In such a case, a conference of the Contracting States will have to establish the procedures for amending the Convention, including its entry into force.

[98] For a detailed discussion of entry into force of amendments, see chapter I, section K.3, above.

> accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.
>
> 3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

b. The amendment provision of the treaty may be very detailed and specify the procedure for the notification of the proposals for amendments, its circulation, its adoption, the manner of obtaining the consent of the parties to be bound by the amendment and the effect of the amendment. Article 12 of the *Optional Protocol to the 1989 Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000,* provides:

> 1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
>
> 2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
>
> 3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Normally, the relevant treaty secretariat circulates proposals of amendment.

Effects of amendments

a. Usually an amendment, upon its entry into force, binds only those States that have formally accepted it. This is a principle ordinarily applicable to the entry into force of amendments. However, it has the negative effect of

creating different regimes under the same treaty. One regime will govern those States that are party to the amendment; another regime will govern those States that are party to the original treaty only. Article 39 (5) of the *United Nations Convention against Transnational Organized Crime, 2000*, reflects this approach:

> 5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Similarly, article 13 (5) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997,* stipulates that amendments enter into force only for those States that have accepted them. Article 13 (5) also deals with the States that become party after the entry into force of the amendment:

> An amendment to this Convention shall enter into force for all States Parties to this Convention, which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

b. A treaty may also provide that all States parties to the treaty may, upon the entry into force of the amendment, be bound by such amendment. Amendments binding upon all parties ensure uniformity of the obligations among all parties. This should be a preferred option for amendments to the constitution of treaty bodies. However, it is necessary to be careful with such a provision as some parties may have difficulties due to domestic legal concerns. See for example Article 108 of the *Charter of the United Nations;* and chapter I, section K.3, above entitled "Entry into force of annexes and amendments".

It is suggested that amendment procedures should avoid complex or unclear rules that may lead to practical difficulties. Unambiguous formulae for amendments that include clear rules governing the proposal of amendments; submission of the amendment proposal for circulation to all parties; adoption procedures (if including a specific proportion of votes, clearly indicating whether this proportion relates to all the parties or all the parties present at the time the vote is taken); circulation of the adopted amendment by the depositary; and entry into force procedures may avoid infinite problems of interpretation and implementation.

An amendment provision with clear procedures is found in the *Comprehensive Nuclear-Test-Ban Treaty, 1996*, article VII:

Amendments

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to this Treaty, the Protocol, or the Annexes to the Protocol. Any State Party may also propose changes, in accordance with paragraph 7, to the Protocol or the Annexes thereto. Proposals for amendments shall be subject to the procedures in paragraphs 2 to 6. Proposals for changes, in accordance with paragraph 7, shall be subject to the procedures in paragraph 8.

2. The proposed amendment shall be considered and adopted only by an Amendment Conference.

3. Any proposal for an amendment shall be communicated to the Director-General, who shall circulate it to all States Parties and the Depositary and seek the views of the States Parties on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Director-General no later than 30 days after its circulation that they support further consideration of the proposal, the Director-General shall convene an Amendment Conference to which all States Parties shall be invited.

4. The Amendment Conference shall be held immediately following a regular session of the Conference unless all States Parties that support the convening of an Amendment Conference request that it be held earlier. In no case shall an Amendment Conference be held less than 60 days after the circulation of the proposed amendment.

5. Amendments shall be adopted by the Amendment Conference by a positive vote of a majority of the States Parties with no State Party casting a negative vote.

6. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.

7. In order to ensure the viability and effectiveness of this Treaty, Parts I and III of the Protocol and Annexes 1 and 2 to the Protocol shall be subject to changes in accordance with paragraph 8, if the proposed changes are related only to matters of an administrative or technical nature. All other provisions of the Protocol and the Annexes thereto shall not be subject to changes in accordance with paragraph 8.

8. Proposed changes referred to in paragraph 7 shall be made in accordance with the following procedures:

> (a) The text of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The

Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(b) No later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Treaty and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(c) The Executive Council shall examine the proposal in the light of all information available to it, including whether the proposal fulfils the requirements of paragraph 7. No later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(d) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(e) If a recommendation of the Executive Council does not meet with the acceptance required under sub-paragraph (d), a decision on the proposal, including whether it fulfils the requirements of paragraph 7, shall be taken as a matter of substance by the Conference at its next session;

(f) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(g) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

2. Amendment where the treaty is silent on amendments

If a treaty does not contain provisions on amendment procedures, the treaty may be amended or modified in accordance with part IV of the *Vienna Convention, 1969*, entitled "Amendment and modification of treaties". Article 39 of the *Vienna Convention, 1969*, states that:

> A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

The *Vienna Convention, 1969,* makes a distinction between amendment and modification among certain parties only.

Article 40 of the *Vienna Convention, 1969,* stipulates that, unless the treaty otherwise provides, any proposal to amend it for all the parties must be notified to all contracting States. Each contracting State has the right to take part in (a) the decision as to the action to be taken in regard to such proposal and (b) the negotiation and conclusion of any agreement for the amendment of the treaty. Additionally, in accordance with article 24 of the *Vienna Convention, 1969,* as referred to in article 39, an amendment enters into force in such manner and upon such date as it may provide or as the negotiating States may agree. Failing such provision or agreement, it enters into force as soon as the consent to be bound has been established for all the negotiating States.

3. Amendment of protocols to a treaty

a. A treaty may contain provisions on amendments to protocols thereto. The *Vienna Convention for the Protection of the Ozone Layer, 1985*, article 9 allows for amendment of the Convention and protocols as follows:

> Amendment of the Convention or Protocols
>
> 1. Any Party may propose amendments to this Convention or to any protocol. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations.
>
> 2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.
>
> 3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at

> the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.
>
> 4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the parties to that protocol present and voting at the meeting shall suffice for their adoption.
>
> 5. Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the parties to this Convention or by at least two-thirds of the parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
>
> 6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.[99]

b. Where parties wish to stipulate a distinct amendment procedure for protocols, protocols may include their own amendment procedures. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the 2000 United Nations Convention against Transnational Organized Crime, 2000*, article 18 states:

> 1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

[99] See also the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* (article17).

> 2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
>
> 3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
>
> 4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
>
> 5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

4. Amendment of annexes to a treaty

A treaty may specify the amendment procedure for its annexes. The *Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, 1997*, describes in detail the rules governing the proposal, adoption, consent to be bound, entry into force and legal effects of the amendment to its annexes. Article 21 reads:

> 1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
>
> 2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
>
> 3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the

text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Similarly, the *International Convention for the Suppression of the Financing of Terrorism, 1999,* states in article 23 that:

1. The annex may be amended by the addition of relevant treaties that:

(a) Are open to the participation of all States;

(b) Have entered into force;

(c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States

> Parties and seek their views on whether the proposed amendment should be adopted.
>
> 3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
>
> 4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

When the treaty is silent on amendments to annexes, the general rules governing amendment and modification of treaties apply.

B. REVISION

Revision (or review) of a treaty basically means amendment of a comprehensive nature. However, if the treaty has not yet entered into force, it is not possible to amend that treaty pursuant to its own amendment provisions. In such a case, States may agree that the text needs to be "revised" subsequent to the treaty's adoption, but prior to its entry into force. Then, the negotiating parties, including signatories and contracting parties, may meet to adopt additional agreements or protocols to address the problem. Such was the case of the *Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*. Certain difficulties relating to the seabed mining provisions contained in Part XI of the Convention were raised primarily by industrialized States. To address these concerns, which would have created a situation where most industrialized States would not have become party to the Convention, the Secretary-General convened in 1990 a series of informal consultations, which culminated in the adoption, on 28 July 1994, of the 1994 Agreement relating to the implementation of Part XI. The Agreement entered into force on 28 July 1996. Its article 2 deals with the relationship between the Agreement and Part XI of the Convention and it provides that the two shall be interpreted and applied together as a single instrument.

A revision may also take place after the entry into force of the treaty. Part IV of the *Vienna Convention, 1969,* does not mention the term revision nor does it refer to the revision procedure. However, some treaties provide for revision or review separate from amendment. In such cases, the term revision is often used to mean a general change to adapt the treaty to new changed circumstances, as opposed to

an amendment that constitutes a change to specific provisions of a treaty. The *Charter of the United Nations* refers to the revision process in Article 109 (under the heading "Amendments"). Article 109 provides:

> 1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
>
> 2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.
>
> 3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

C. MODIFICATION AMONG CERTAIN PARTIES ONLY

Under treaty law, the term modification normally refers to alterations of certain provisions of a treaty only among certain parties to that treaty. Among other parties, the original provisions apply. In accordance with article 41 of the *Vienna Convention, 1969*, two or more parties to a treaty may conclude an agreement to modify that treaty only among themselves if such a possibility is contemplated in the treaty or is not prohibited by the treaty and the modification does not affect other parties' rights and obligations under the treaty and is not against the object and purpose of the treaty.

The *United Nations Convention on the Law of the Sea, 1982*, article 311 (3) reads:

> Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

Provisions modifying a treaty between certain parties only are normally found in bilateral treaties supplementing certain provisions of multilateral treaties such as the *Convention between Spain and Romania Supplementary to the 1954 Convention Relating to Civil Procedure, 1999*; and the *Agreement between the Government of the Republic of Hungary and the Government of Canada on Air Transport* that supplemented the provisions of the *1944 Convention on International Civil Aviation, 1998*.

IV. DURATION

Although not universal, some multilateral treaties contain provisions on duration. Where there is no provision, Part V, sections 1 (articles 42 through 45), and 3 (articles 54 through 64), of the *Vienna Convention, 1969*, set out the circumstances in which a treaty may be denounced, terminated or its operation suspended, other than on grounds of invalidity.[100]

A. SUSPENSION

The suspension of the operation of a treaty produces the legal effect of the provisional cessation of the application of its provisions. The treaty still subsists but its application is put on hold. General provisions concerning the suspension of a treaty are contained in Part V, section 1 of the *Vienna Convention, 1969*. Suspension is expressly referred to in article 57.

A treaty may specify the conditions of its suspension. Treaties containing clauses on the suspension of the treaty as a whole are not abundant. Some examples are found in treaties providing for the suspension or derogation of some of their provisions, particularly treaties in the economic field such as those concluded within the framework of the European Community or the World Trade Organization. See for example, article 7 (c) of the *Treaty establishing the European Community, 1957*:

> When drawing up its proposals with a view to achieving the objectives set out in Article 8a, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

[100] Part V, section 2 of the *Vienna Convention, 1969*, states the rules on invalidity of treaties.

> If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.[101]

In the absence of provisions relating to suspension, under customary international law, the operation of a treaty may be suspended with regard to all the parties or to a particular party at any time by consent of all the parties after consultation with the other contracting States (see article 57 of the *Vienna Convention, 1969*). As a general rule, provided that suspension is not prohibited by the treaty, such a treaty may also be suspended temporarily by agreement between certain parties only, if the suspension does not affect the enjoyment by the other parties of their rights or the performance of their obligations under the treaty and the suspension is not incompatible with the object and purpose of the treaty (see article 58 (1) (b) of the *Vienna Convention, 1969*). A treaty may be implicitly suspended by the conclusion of a later treaty if it appears from the later treaty or is otherwise established that such was the intention of the parties (article 59 (2) of the *Vienna Convention, 1969*).

B. WITHDRAWAL/DENUNCIATION

Generally, a party may withdraw from or denounce a treaty, in conformity with the provisions of the treaty or at any time with the consent of all parties after consultation with all contracting States (see article 54 of the *Vienna Convention, 1969*). The words denunciation and withdrawal express the same legal concept. Denunciation (or withdrawal) is a procedure initiated unilaterally by a State to terminate its legal engagements under a treaty. The treaty in question continues to produce its effects with respect to other parties to the treaty.

General provisions concerning denunciation or withdrawal of a treaty are included in articles 42 through 45 of the *Vienna Convention*. Part V, section 3, of the *Vienna Convention, 1969* contains further provisions relating to the denunciation of or the withdrawal from a treaty.

1. Withdrawal (or denunciation) in accordance with the provisions of the treaty

When a treaty authorizes its denunciation, it often also specifies the conditions under which the denunciation may take place. The *Optional Protocol to the 1989 Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000*, article 15 provides:

[101] See also the *General Agreement on Tariffs and Trade, 1947* (article XVIII); and the *Agreement on Technical Barriers to Trade (annexed to the Marrakech Agreement establishing the World Trade Organization, 1994)* (article 12.8).

> 1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
>
> 2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective. [102]

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*, also authorizes its denunciation and sets out the conditions to be followed to denounce the Convention. Article 20 provides:

> 1. This Convention shall be of unlimited duration.
>
> 2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
>
> 3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.
>
> 4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.[103]

The *Convention on the Rights of the Child, 1989*, also permits denunciation. Article 52 provides:

> A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

[102] See also the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, 2000* (article 11).
[103] See also the *United Nations Framework Convention on Climate Change, 1992* (article 25).

> Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.[104]

Article 28 of the *Stockholm Convention on Persistent Organic Pollutants, 2001*, for example, provides for the withdrawal from the Convention:

> Withdrawal
>
> 1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the depositary.
>
> 2. Any such withdrawal shall take effect upon the expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 19 of the *Vienna Convention for the Protection of the Ozone Layer, 1985*, provides for the withdrawal from the Convention and any of its Protocols:

> At any time after four years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
>
> Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.
>
> Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.
>
> Any Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

2. Withdrawal (or denunciation) where the treaty is silent on withdrawal (or denunciation)

Some treaties do not contain denunciation or withdrawal provisions. For example, some human rights treaties such as the *International Covenant on Civil and Political Rights, 1966,* do not contain denunciation or withdrawal provisions.

[104] See also the *International Convention on the Elimination of All Forms of Racial Discrimination, 1966* (article 21), and the *Protocol relating to the Status of Refugees, 1967* (article 9).

The *Vienna Convention, 1969*, upholds the principle that a treaty is subject to denunciation or withdrawal only if the appropriate provisions are incorporated in the treaty. However, the implicit authorization by a treaty constitutes an exception to that principle. Accordingly, in the case of a treaty that is silent on denunciation or withdrawal, a party may withdraw from or denounce a treaty if it is established that the parties intended to admit the possibility of denunciation or withdrawal or if a right of denunciation or withdrawal may be implied by the nature of the treaty. A party must give at least 12 months' notice of its intention to denounce or withdraw from a treaty (see article 56 of the *Vienna Convention, 1969*).[105]

C. DENIAL OF RIGHTS/EXCLUSION

Some treaties contain provisions denying particular rights under the treaties to parties in certain circumstances. Article 61 of the *International Cocoa Agreement, 2001,* provides:

> If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude such Member from the Organization. The Council shall immediately notify the depositary of any such exclusion.

[105] On 25 August 1997, the Secretary-General received from the Government of the Democratic People's Republic of Korea a notification of withdrawal from the *International Covenant on Civil and Political Rights, 1966*, dated 23 August 1997. As the Covenant does not contain a withdrawal provision, the depositary communicated on 23 September 1997 an aide-mémoire to the Government of the Democratic People's Republic of Korea explaining the Secretary-General's position in relation to the above notification. The Secretary-General, as depositary relying on article 56 of the *Vienna Convention, 1969*, concluded that in the case of the Covenant, the negotiating parties did not seem to have overlooked the possibility of explicitly providing for withdrawal or denunciation but rather that it appeared that they had deliberately intended not to provide for it. In relation to the question on whether the nature of the Covenant, as a human rights treaty, implied a right of denunciation or withdrawal, the Secretary-General concluded that, even though some human rights treaties explicitly provide for denunciation, such treaties do not imply an inherent right of denunciation or withdrawal. In particular, since the Covenant was among the relative minority of human rights treaties not explicitly subject to denunciation or withdrawal, it would be incorrect to assume that the Covenant's nature somehow implied the possibility of denunciation or withdrawal. Therefore, consistent with article 54 of the *Vienna Convention, 1969*, a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agreed with such a withdrawal. Accordingly, the Secretary-General circulated the notification of withdrawal and the aide-mémoire to all States Parties under cover of C.N.1997.TREATIES-10 of 12 November 1997. Austria, Canada, Denmark, Finland, France, Germany, Kuwait, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom (and the United Kingdom on behalf of the European Union) wrote to the Secretary-General expressing their views on the denunciation by the Democratic People's Republic of Korea. All except Kuwait clearly stated in their letters to the Secretary-General that they considered that denunciation was not permitted under the Covenant and objected to the withdrawal by the Democratic People's Republic of Korea.

> Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.[106]

Similarly, the *International Agreement on Olive Oil and Table Olives, 1986*, article 58, states that:

> If the Council decides that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by unanimous decision of the other Members, exclude that Member from this Agreement. The Council shall immediately notify the depositary of its decision. The Member in question shall cease to be a Party to this Agreement 30 days after the date of that decision.

Exclusion from a treaty could also result from the non-payment of dues.

D. EXTENSION OF THE DURATION

Where a treaty specifies its duration it may also provide for extension of that duration and the conditions for extension. Thus, for example, article 52 (2) of the *International Coffee Agreement, 2000,* provides:

> (2) The Council may, by a vote of a majority of the Members having not less that a distributed two-thirds majority of the total votes, decide to extend this Agreement beyond 30 September 2007 for one or more successive periods not to exceed six years in total.

Similarly, the *Food Aid Convention, 1999*, under its article XXV, was to remain in force "until 30 June 2002".[107] Article XXV (b) and (c) of the Convention further provides:

> (b) The Committee may extend this Convention beyond 30 June 2002 for successive periods not exceeding two years on each occasion, provided that the Grains Trade Convention, 1995, or a new Grains Trade Convention replacing it, remains in force during the period of the extension.
>
> (c) If this Convention is extended under paragraph (b) of this Article, the commitments of members under paragraph (e) of Article III may be subject to review by members before the entry into force of each

[106] See also the *Agreement Establishing the International Tea Promotion Association, 1977* (article 24); the *International Natural Rubber Agreement, 1987* (article 64); and the *International Coffee Agreement, 2000* (article 50).

[107] The *Food Aid Convention, 1999*, was extended pursuant to these provisions: In June 2002 it was decided to extend the Convention until 30 June 2003 and in June 2003 it was decided to extend the Convention until 30 June 2005. See also the *International Agreement on Olive Oil and Table Olives, 1986* (article 60).

> extension. Their respective commitments, as reviewed, shall remain unchanged for the duration of each extension.

Likewise, the *International Natural Rubber Agreement, 1987,* was to remain in force "for a period of five years after its entry into force" unless extended as permitted under article 66:

> 3. The Council may, by special vote, extend this Agreement by a period or periods not exceeding two years in all, commencing from the date of expiry of the five-year period specified in paragraph 1 of this article.

V. TERMINATION

Based upon the general principle of international law *pacta sunt servanda,* a treaty in force is binding upon the parties and must be performed by them in good faith.[108] However, a treaty may be ended by agreement of the parties in accordance with the procedure sets out in the treaty itself or pursuant to customary international law, as codified by the *Vienna Convention, 1969.* General provisions governing termination are specified in the *Vienna Convention, 1969,* articles 42 to 45. General rules on termination of the operation of treaties are included in section 3 of the *Vienna Convention, 1969.*

Unlike amendments, which have the effect of altering the provisions of the treaty, termination releases the parties from any obligation to comply further with the treaty provisions; the treaty ceases to be in force (unless the provisions concerned are also part of customary international law).

Article 42 (2) of the *Vienna Convention, 1969,* states that a treaty may only be terminated as a result of the application of the provisions of the treaty itself or of the *Vienna Convention, 1969.* A subsequent treaty to which all the parties of the former treaty are also party may also terminate a treaty.

1. Termination in accordance with the provisions of the treaty

a. Although most treaties are concluded for an indefinite period of time, a treaty may specify the rules governing its termination and the administrative consequences and implications of such termination.

A treaty may be terminated upon the decision of an organ established under the treaty. For example, under article 63 (4) and (5) of the *International Cocoa Agreement, 2001,* the treaty may be terminated:

[108] See article 26 of the *Vienna Convention, 1969.*

Duration, extension and termination

> […]
>
> 4. The Council may at any time, by special vote, decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 26 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the depositary of any such decision.
>
> 5. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.
>
> […]

Also the *International Coffee Agreement, 2000*, article 52 (3) and (4):

> The Council may at any time, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to terminate this Agreement. Termination shall take effect on such date as the Council shall decide.
>
> Notwithstanding the termination of this Agreement, the Council shall remain in being for as long as necessary to take such decisions as are needed during the period of time required for the liquidation of the Organization, settlement of its accounts and disposal of its assets.

Moreover, the *International Natural Rubber Agreement, 1979*, in article 67 (6) states:

> The Council may at any time, by special vote, decide to terminate this Agreement with effect from such date as it may determine. The Council shall notify the depositary of any such decision.

b. The treaty may also specify a set date for its termination. For example the *International Agreement on Olive Oil and Table Olives, 1986,* article 60 (1) reads as follows:

> This Agreement shall remain in force until 31 December 1991 unless the Council decides to prolong it, extend it, renew it or

terminate it in advance in accordance with the provisions of this article.

c. The treaty may indicate as well that the later treaty is terminating an earlier treaty or a number of them. Thus, the *Single Convention on Narcotic Drugs, 1961*, provides for the termination of certain earlier treaties in the narcotics field as between parties to the *Single Convention*. Its article 44 reads as follows:

> Termination of Previous International Treaties
>
> 1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:
>
> (a) International Opium Convention, signed at The Hague on 23 January 1912;
>
> (b) Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925;
>
> (c) International Opium Convention, signed at Geneva on 19 February 1925;
>
> (d) Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931;
>
> (e) Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931;
>
> (f) Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, except as it affects the last-named Convention;
>
> (g) The Conventions and the Agreements referred to in subparagraphs (*a*) to (*e*) as amended by the Protocol of 1946 referred to in subparagraph (*f*);
>
> (h) Protocol signed at Paris on 19 November 1948 Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success on 11 December 1946;
>
> (i) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and

> Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should that Protocol have come into force.
>
> 2. Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, shall, between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2(*b*) of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

2. Termination where the treaty is silent on termination

The *Vienna Convention, 1969,* sets out general principles regarding termination in case the treaty does not contain any provision on termination. Articles 54 and 55 provide that the termination of a treaty may take place at any time following consultation by consent of all the parties. Unless the treaty otherwise provides, a multilateral treaty does not terminate by the reason only that the number of parties falls below the number necessary for its entry into force. However, exceptionally, a treaty may terminate for this reason. See the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948.* Article XV provides that:

> If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date in which the last of these denunciations shall become effective.

Many treaties do not include in their final clauses provisions on termination. This is often the case with human rights and environmental treaties.

CONCLUSIONS

Final clauses are often perceived as merely formal provisions. However, they include articles on a vast variety of matters, some of which, such as entry into force, amendment or settlement of disputes are of extreme importance for the operation of a treaty. Final clauses including articles on signature, ratification, acceptance, approval, accession, reservations, entry into force, settlement of disputes, amendment, annexes, withdrawal/denunciation or the designation of the depositary are set forth in most multilateral treaties. Specific provisions on these matters contribute to assisting with the effective implementation of a multilateral treaty. In contrast, final clauses relating to provisional application, territorial application, relationship to other treaties, or duration, are not always needed. Their inclusion in a particular treaty depends on the nature and content of that treaty.

Although final clauses tend to follow existing precedents, drafting should take into consideration the particular needs of a treaty. Given the essential role they play, final clauses should also be drafted to overcome recurring problems, particularly the most troublesome such as participation in treaties or entry into force of amendments. In this context ST/SGB/2002/7 is considered particularly important from the perspective of the Secretary-General.

United Nations ST/SGB/2001/7

Secretariat

28 August 2001

Secretary-General's bulletin

Procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements

The Secretary-General, for the purpose of establishing procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements, promulgates the following:

Part I
Treaties and international agreements concluded by the United Nations

Section 1
Drafts of treaties and international agreements

Drafts of treaties and international agreements to be concluded by the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

Section 2
Registration or filing and recording

All treaties and international agreements concluded by the United Nations shall be forwarded by the relevant department, office or regional commission to the Treaty Section of the Office of Legal Affairs (Treaty Section), upon their entry into force, for registration pursuant to Article 102 of the Charter of the United Nations, or filing and recording. Such instruments shall remain in the custody of the Treaty Section unless special arrangements have been approved in advance by the Treaty Section.

Part II
Instruments relating to treaty actions by the United Nations

Section 3
Instruments requiring consultations

Where the United Nations intends to undertake a treaty action for which purpose full powers, an act of formal confirmation or an instrument of acceptance, approval or accession are required, the relevant department, office or regional commission shall consult with the Office of Legal Affairs in advance of such action.

Part III
Treaties and international agreements to be deposited with the Secretary-General

Section 4
Drafts of treaties and international agreements

4.1 All draft treaties and international agreements intended to be deposited with the Secretary-General of the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

4.2 Draft final clauses of such treaties and international agreements shall be submitted by the relevant department, office or regional commission to the Treaty Section for review and comment prior to finalization.

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4.3 Every endeavour shall be made to ensure that the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations are concluded only in the official languages of the United Nations.

Section 5
Adopted texts of treaties and international agreements

5.1 Following the formal adoption of the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations, the adopted texts shall be submitted by the relevant department, office or regional commission, in both paper and electronic formats, to the Treaty Section, in all the authentic languages, for purposes of preparing the originals of such agreements, and for performing the requisite depositary functions. In general, a period of four weeks should be allowed between the dates of adoption and the dates on which the treaties or international agreements are opened for signature to enable the preparation of the originals of the treaties or international agreements and the distribution of the certified true copies.

5.2 Following the formal adoption of such texts, no further changes shall be made to the texts by any department, office or regional commission, except in consultation with the Treaty Section.

Section 6
Designation of the Secretary-General as depositary of treaties and international agreements

6.1 When it is intended that the Secretary-General discharge the depositary functions relating to treaties and international agreements, such treaties or international agreements shall confer the depositary functions on the Secretary-General only and not on any other official of the United Nations. The Secretary-General shall not be designated as a co-depositary.

6.2 When it is intended that the Secretary-General be designated the depositary, the relevant department, office or regional commission shall consult the Treaty Section in advance.

6.3 All treaties and international agreements deposited with the Secretary-General and open for signature shall remain in the custody of the Treaty Section. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

Section 7
Full powers

All instruments of full powers received by any department, office or regional commission authorizing representatives to sign treaties and international agreements deposited with the Secretary-General shall be forwarded to the Treaty Section for verification prior to signature of such treaties and international agreements. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

Section 8
Ceremony of signature

When it is arranged for States to sign a treaty or international agreement deposited with the Secretary-General on the same occasion, the Office of Legal Affairs shall be informed in advance by the relevant department, office or regional commission. Arrangements for the ceremony at which the signatures are to be affixed, including provision for the discharge of the depositary functions, shall be made in consultation with the Treaty Section.

Section 9
Instruments and notifications to be deposited with the Secretary-General

Instruments of ratification, acceptance, approval, accession, succession or any similar instruments and notifications relating to treaties and international agreements deposited with the Secretary-General which are received by any department, office or regional commission shall be forwarded to the Treaty Section.

Part IV
Final provisions

Section 10
Final provisions

10.1 The present bulletin shall enter into force on 1 October 2001.

10.2 Administrative instruction AI/52 of 25 June 1948 is hereby abolished.

(*Signed*) Kofi A. **Annan**
Secretary-General

GLOSSARY

Acceptance	See ratification.
Accession	Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession". Accession has the same legal effect as ratification, acceptance or approval.
Adoption	Adoption is the formal act by which negotiating parties establish the form and content of a treaty. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.
Amendment	Amendment, in the context of treaty law, means the formal alteration of the provisions of a treaty by its parties.
Approval	See ratification.
Authentication	Authentication is the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, its provisions cannot be modified except by formal amendment.
Authentic language	A treaty typically specifies its authentic languages - the languages in which the meaning of its provisions is to be determined.
Authentic text	The authentic text of a treaty is the version of the treaty that has been authenticated by the parties.
Bilateral treaty	See treaty.
Consent to be bound	A State expresses its consent to be bound by a treaty under international law by some formal act, i.e., definitive signature, ratification, acceptance, approval or accession.
Contracting State	A contracting State is a State that has expressed its consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for that State.
Convention	The term “convention” is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are referred to as conventions. The same holds true for instruments adopted by an organ of an international organization.

Declaration

interpretative declaration
An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.

mandatory declaration
A mandatory declaration is a declaration specifically required by the treaty itself. Unlike an interpretative declaration, a mandatory declaration is binding on the State making it.

optional declaration
An optional declaration is a declaration that a treaty specifically provides for, but does not require. Unlike an interpretative declaration, an optional declaration is binding on the State making it.

Depositary

The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969. A depositary can be one or more States, an international organization, or the chief administrative officer of the organization, such as the Secretary-General of the United Nations.

Depositary notification

A depositary notification (sometimes referred to as a C.N. - an abbreviation for circular notification) is a formal notice that the Secretary-General sends to all Member States, non-member States, the specialized agencies of the United Nations, and the relevant secretariats, organizations and United Nations offices, as depositary of a particular treaty. The notification provides information on that treaty, including actions undertaken.

Entry into force

Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force.

Final Act

A Final Act is a document summarising the proceedings of a diplomatic conference. It is normally the formal act by which the negotiating parties bring the conference to a conclusion. It is usually part of the documentation arising from the conference, including the treaty, the resolutions and

	interpretative declarations made by participating States. There is no obligation to sign the Final Act, but signature may permit participation in subsequent mechanisms arising from the conference, such as preparatory committees. Signing the Final Act does not normally create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.
Final clauses	Final clauses are provisions typically found at the end of a treaty, dealing with such topics as signature, ratification, acceptance, approval, accession, denunciation, amendment, reservation, entry into force, settlement of disputes, depositary matters and authentic texts.
Full powers	Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given treaty actions.
Interpretative declaration	See declaration.
Mandatory declaration	See declaration.
Modification	Modification, in the context of treaty law, refers to the variation of certain provisions of a treaty only as between particular parties to that treaty. As between other parties, the original provisions apply.
Multilateral treaty	See treaty.
Optional declaration	See declaration.
Party	A party to a treaty is a State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law.
Protocol	A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times States have

negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.

Ratification, acceptance, approval

Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty.

Registration

Registration, in the context of treaty law and practice, refers to the function of the Secretariat of the United Nations in effecting the registration of treaties and international agreements under Article 102 of the *Charter of the United Nations*.

Reservation

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations.

Revision

Revision basically means amendment. However, some treaties provide for revisions separately from amendments. In that case, revision typically refers to an overriding adaptation of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.

Signature

definitive signature (signature not subject to ratification)
Definitive signature occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval.

simple signature (signature subject to ratification)
Simple signature applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves the treaty.

Treaty

Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons. Thus, treaties may be concluded between:

a. States;
b. International organizations with treaty-making capacity and States; or

c. International organizations with treaty-making capacity.

The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law.

The Vienna Convention 1969 defines a treaty as "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" (article 2(1)(a)). Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements.

No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity.

See article 2(1)(a) of the Vienna Convention 1969. See generally Vienna Convention 1969 and Vienna Convention 1986.