ST/LEG/7/Rev.1

SUMMARY OF PRACTICE OF THE SECRETARY-GENERAL AS DEPOSITARY OF MULTILATERAL TREATIES

Prepared by the Treaty Section of the Office of Legal Affairs

UNITED NATIONS

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Errata

Para. 43 - The final sentence (starting at line 15) should be deleted.

Para. 79 - The second sentence (starting at line 4) should read as follows:

"However, a difficulty has occurred as to possible participation in treaties when entities which appeared otherwise to be States could not be admitted to the United Nations, nor become parties to the Statute of the International Court of Justice owing to the opposition of a permanent member of the Security Council."

Para. 84 - Second sentence (at line 5). After the word "Brunei", add the word "Darussalam".

Para. 86 - The third sentence (starting at line 8) should be deleted.

Para. 87 - Third sentence (line 6). After "2 April 1947" the remainder of the sentence should be deleted.

Para. 89 - The third sentence (starting at line 12) should read as follows:

"However, this is without effect on the capacity of the Federal Republic of Yugoslavia (Serbia and Montenegro) to participate in treaties deposited with the Secretary-General subject to any decision taken by a competent organ representing the international community of States as a whole or by a competent treaty organ with regard to a particular treaty or convention."

Para. 97 - The penultimate sentence (starting at line 14) should read as follows:

"Should entities in this category attain independence and become fully fledged States, their status will change accordingly."

Paras. 176 (line 8), 178 (line 6) and 211 (line 3) - The word "passing" and "pass" should be followed by the word "judgement".

Para. 297 should read as follows:

"In the absence of provisions which set specific conditions for succession or which otherwise restrict succession, the Secretary-General is guided by the participation clauses of the treaties as well as by the general principles governing the participation of States (see chap. V). The independence of the new successor State, which then exercises its sovereignty on its territory, is without effect on the treaty rights and obligations of the predecessor State in its own (remaining) territory. Thus, after the separation of parts of the territory of the Union of Soviet Socialist Republics (which became independent States), the Russian Federation continued all treaty rights and obligations of the predecessor State. 170/"*

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* The correction, inter alia, includes the deletion of the final two sentences of the original paragraph.

Para. 298 - The second sentence (starting on line 1) should read as follows:

"Such was the case when the Czech Republic and Slovakia were formed upon the agreed dissolution of Czechoslovakia, which consequently ceased to exist."

Annex XVII - Date of ratification: The date in the French text should read "(19 juillet 1994)."

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* The revised and updated version of this title originally appeared under the symbol ST/LEG/8.

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Chapter I

INTRODUCTION

1. The number of multilateral agreements deposited with the Secretary-General totalled 436 as at 31 December 1993. In addition, the Secretary-General also exercises the function of depositary with respect to the treaties that had been deposited with the Secretary-General of the League of Nations (see para. 36). Thus, the Secretary-General is, on a worldwide basis, the principal depositary of treaties. Volume V of the Repertory of Practice of United Nations Organs, 1/ in the section dealing with Article 98 of the Charter of the United Nations, contains certain comments regarding the depositary functions of the Secretary-General.

2. The purpose of the present summary is to highlight the main features of the practice followed by the Secretary-General in this field in the daily exercise of his functions. A number of annexes follow the main body of the text, containing models of instruments, depositary notifications by the Secretary-General, etc. This volume supersedes the previous "Summary of practice of the Secretary-General as depositary of multilateral agreements" (ST/LEG/7).

3. Multilateral agreements do not remain static and the depositary is frequently required to solve problems that arise. Changes in the structure of States, the emergence of new States exercising full sovereignty and the establishment of a growing number of international organizations have also had repercussions in the field of multilateral agreements.

4. It will therefore be seen that the Secretary-General's practice has evolved over time as a result of efforts to find more satisfactory solutions in the light of experience or of actions by an organ of the United Nations or in response to comments from Governments.

5. The structure of the present summary follows the usual chronology of the functions to be performed by the depositary from the time of conclusion of the treaty. Each phase is dealt with in a separate chapter, where the problems involved, the solutions adopted and the current practice are described.

6. It must be borne in mind, however, that many of the various aspects of depositary functions are intimately interlinked. For example, full powers must emanate from those same authorities that validly establish instruments of ratification. Thus, while the specific aspects of full powers will be dealt with in one chapter, the practice and requirements concerning the deposit of instruments, as described in a subsequent chapter, also applies, mutatis mutandis, to full powers. In the same manner, the specific problems raised by successions to treaties will be discussed in one chapter, but the practice concerning the receivability and deposit of instruments on a general level, as described in the relevant chapter, also apply, mutatis mutandis, to successions. Another example of this interrelationship would be the case where the Secretary-General, as depositary, would have to refuse the deposit of an instrument when it includes reservations that are prohibited by the treaty. In that case, the practice on reservation, as described in the relevant chapter, would have an impact on the receivability of the instrument. Cross-references have therefore been inserted, but not exhaustively. The above-mentioned interrelations should therefore always be kept in mind.

7. Mention should be made of the publication Multilateral Treaties Deposited with the Secretary-General (ST/LEG/SER.E/-). This is a yearly publication that gives the status of all such treaties as at 31 December of each year. This publication covers: (a) all multilateral treaties, the originals of which are deposited with the Secretary-General; (b) the Charter of the United Nations, in respect of which certain depositary functions have been conferred upon the Secretary-General (although the original of the Charter itself is deposited with the Government of the United States of America; (c) multilateral treaties formerly deposited with the Secretary-General of the League of Nations or other depositaries, to the extent that subsequent formalities or decisions affecting them have been taken within the framework of the United Nations; and (d) certain pre-United Nations treaties, other than those formerly deposited with the Secretary-General of the League, which were amended by protocols adopted by the General Assembly of the United Nations.

8. In the publication, and for each treaty, participants are listed alphabetically, along with the dates of their signature and deposit of their instrument of ratification, accession, etc. The text of declarations, reservations and objections is also included after the list of participants. The same applies to communications of a special nature such as declarations recognizing the competence of committees such as the Human Rights Committee or the Committee against Torture and notifications under article 4 (3) of the Covenant on Civil and Political Rights, notifications of territorial application and related communications, including declarations with respect to objections. A number of notes to the present summary refer to the said publication, where the text of relevant reservations, objections, explanatory notes, etc., may be found. For the table of contents of the publication, see annex I.

Chapter II

GENERAL ASPECTS OF DEPOSITARY FUNCTIONS

A. Background

9. The practice of designating a "depositary" of multilateral treaties came into being as a result of the increasing number of parties to multilateral agreements. The General Assembly has not laid down a precise definition of the term "treaty". 2/ The Vienna Convention on the Law of Treaties, sometimes called "the Vienna Convention", 3/ in its article 2, proposes the following definition:

> "'Treaty' means an international agreement concluded ... 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."

10. In the present summary, the term "agreement" shall be understood to mean a treaty, an "international multilateral agreement or convention", etc. Unless precluded by the context, the term "State" may also apply to an international organization when appropriate. As to the parties, a treaty may be concluded between States, and also between States and international organizations or between international organizations, as provided for in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. 4/ The term "international organization" is understood to mean an intergovernmental organization as provided for in article 1, paragraph 1 (1), of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. 5/ Although those definitions were given within specific frameworks, they reflect the general consensus on the matter. When a multilateral treaty provided for its subsequent ratification, the relevant instruments by the parties were, in the past, "exchanged", as is the case with bilateral treaties.

11. In view of the growing complexity of these procedures, the practice of designating a "depositary" was initiated. The treaty was prepared and signed in one copy only, which was entrusted to one of the parties, usually the State that had hosted the Conference at which the treaty had been adopted; and this depositary in turn prepared certified copies for all the parties. In addition, the depositary, inter alia, verifies the acceptability of signatures and instruments (or documents of a similar nature) and of related reservations, declarations, etc., and duly informs the parties concerned, through depositary notifications, of such actions, and also of the entry into force of the treaties.

B. Designation of the depositary and determination of his functions

1. General principles

12. The depositary is normally designated by the treaty. In the past, only States were depositaries. However, with the establishment first of the League of Nations and later of the United Nations and its specialized agencies, these and other organizations have been increasingly entrusted with depositary functions.

13. As concerns the Secretary-General, a practice evolved concerning the specific methods and procedures according to which the Secretary-General, as depositary, would perform his duties, which could include customary functions not specifically provided for under the treaty concerned. In most of its aspects the Secretary-General's practice was in essence codified 6/ by relevant provisions of the Vienna Convention on the Law of Treaties of 23 May 1969, which entered into force on 27 January 1980 3/ and to which 74 States were parties as at 31 December 1993. The Secretary-General's present practice, though differing somewhat from that described in the Convention (see annex II), does take into account the most relevant provisions of the Vienna Convention as regards the usual functions of a depositary. Accordingly, the parties to a number of subsequent treaties have therefore not considered it necessary specifically to list the various functions of the Secretary-General as depositary. Such a listing may not always be exhaustive in any event, and these parties have simply designated the Secretary-General as depositary, on the understanding that he would perform all necessary duties in line with past practice and as outlined in the Vienna Convention.

14. As will be seen below, the Secretary-General, in the performance of his depositary duties, is guided by:

(a) The provisions of the treaty;

(b) Customary treaty law, including as it may be deemed codified by various conventions on the matter;

(c) The general principles flowing from pertinent resolutions or decisions of the General Assembly and other organs of the United Nations, specifically from General Assembly resolution 478 (V) of 16 November 1950.

2. Joint depositaries

15. In a few instances, for example, in the Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature in London, Moscow and Washington on 1 July 1968, 7/ several depositaries have been appointed jointly, but the Secretary-General has never shared depositary duties.

16. When it was contemplated that the depositary functions pertaining to the Customs Convention on Containers, 1972, might be exercised jointly by the Secretary-General of the then Customs Cooperation Council and the Secretary-General, the Secretary-General conducted a review of possible precedents. The only instance of depositary functions exercised "jointly" by the Secretary-General and another depositary appeared to be that of the Convention on the Privileges and Immunities of the Specialized Agencies, 8/ section 42 of which provides that States not members of the United Nations may accede in respect of an agency by depositing an instrument, either with the Secretary-General or with the head of the agency. Moreover, the "joint" depositary functions of a head of agency are limited to that specific agency. This provision was probably included for the same reasons as those that justified the "Vienna formula" see para. 79 below). In practice, the only time this provision was applied was when Nepal, prior to its becoming a Member of the United Nations, deposited an instrument in respect of the World Health Organization. 9/ Accordingly, the Secretary-General concluded that such a joint exercise of depositary function was not desirable since, apart from duplication of work, it might lead to unnecessary complications resulting from possible differences in the

depositaries' practice. It was accordingly decided that the existing practice in this respect should be continued.

17. Although the Secretary-General is the only depositary proper of the Convention on the International Maritime Organization, that Convention provides for a somewhat complicated procedure as regards the amendment of the Convention. The notifications of acceptance of amendments must be made not with the Secretary-General of the United Nations, but with the Secretary-General of the International Maritime Organization, who then informs its members of the receipt of the notifications. However, the Secretary-General of the International Maritime Organization must then also transmit the notifications of acceptance of the amendments to the Secretary-General of the United Nations, and it is only the formal deposit with the Secretary-General that produces a legal effect, thus demonstrating that indeed the Secretary-General is the only depositary of the Convention.

18. A somewhat similar situation exists as concerns the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms of 29 October 1971, 10/ where the Secretary-General does not himself notify States parties, by means of a depositary notification, of the actions (signature, deposit of instruments, etc.) taken by States in respect of the Convention, but instead informs the Director-General of the World Intellectual Property Organization, who is the one who notifies the parties. But here again, the Director-General of the World Intellectual Property Organization acts in an ancillary fashion, since all depositary functions proper (custody of the original, issuance of certified copies, signatures, deposit of instruments, etc.) are performed by or with the Secretary-General.

19. It may also happen that a treaty will provide that it shall be open for signature, usually for a period of time, outside United Nations Headquarters. Thus, for example, the Vienna Convention on the Law of Treaties was open for signature from 23 May 1969 to 30 November 1969 at the Federal Ministry of Foreign Affairs of Austria, and only subsequently at United Nations Headquarters. Yet this authority to receive signatures is also of an ancillary nature and not evidence of co-depositary functions (see para. 116 below).

3. Transfer of depositary functions

20. On the other hand, depositary duties initially entrusted to the Secretary-General have occasionally been subsequently transferred to another depositary under provisions of the agreement itself, such as paragraphs 19 (c) and 20 of the Terms of Reference of the International Nickel Study Group. 11/

21. Conversely, depositary functions entrusted to a State have been transferred to the Secretary-General. Thus, for example, the functions exercised by the French Government under the International Agreement of 18 May 1904 and the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic and the International Agreement of 4 May 1910 for the Suppression of Obscene Publications were transferred to the Secretary-General in accordance with Economic and Social Council resolution 82 (V) of 14 August 1947. The Secretary-General has also assumed the depositary functions previously performed by the Secretary-General of the League of Nations (see para. 36 below).

4. Successive depositaries of related treaties

22. A rather unique situation has occurred in respect of the General Agreement on Tariffs and Trade. The contracting parties had chosen the Secretary-General as depositary for the General Agreement and for all subsequent related agreements and protocols of accession to agreements, up to those concluded until 1 February 1955. As of that date, all subsequent agreements were deposited with the Director-General of the General Agreement on Tariffs and Trade. Thus, when a State now becomes a contracting party to the General Agreement on Tariffs and Trade and simultaneously a party to various agreements concluded under the auspices thereof, the relevant instruments should be deposited, some with the Secretary-General and the others with the Director General of the General Agreement. In most cases, however, all instruments are in fact now handed to or received by the Director-General of the General Agreement. Thus when instruments relating to treaties deposited with the Secretary-General are received by the Director-General of the General Agreement on Tariffs and Trade, he accordingly advises the Secretary-General, who then acts as if the relevant instruments had been received directly from the parties concerned.

5. Deposit with the Secretary-General of the instruments of acceptance of amendments to the Charter of the United Nations

23. A converse situation has occurred in the case of the Charter of the United Nations, the original of which is deposited with the Government of the United States of America (the State where the San Francisco Conference, at which the Charter was adopted, took place), as provided by Article 111 of the Charter itself, and not with the Secretary-General. The reason was that, at the time the Charter was adopted, evidently the United Nations was not yet in existence, and its Secretary-General could not consequently be entrusted with the functions of depositary in respect of the Charter. However, when the General Assembly, by resolutions 1991 A and B (XVIII) of 17 December 1963 on the question of equitable representation on the Security Council and the Economic and Social Council, decided to amend Articles 23, 27 and 61 of the Charter and to submit the amendments for ratification by the States Members of the United Nations, the above-mentioned resolutions did not designate the authority with which the instruments of ratification of the amendments should be deposited (nor does the Charter of the United Nations itself). As indicated above, the Charter, in its Article 110, paragraph 2, does provide that the instruments of ratification of the Charter itself shall be deposited with the Government of the United States of America and that that Government shall notify all the signatory States and the Secretary-General of each deposit, but there is no analogous provision relating to the deposit of instruments in respect of amendments.

24. As a general rule, unless a treaty provides otherwise, it is normally the responsibility of the depositary of the treaty to receive and communicate all instruments and notifications relating to that treaty, including the acceptance of amendments thereto. However, as concerns the Charter of the United Nations, precedents were established under which certain functions of a depositary nature, for which no express provision was made in the Charter, are performed by the Secretary-General. In particular, the Secretary-General acts as depositary of the instruments by which new Members accept the obligations contained in the Charter under its Article 4. He also acts as depositary of the declarations by which States not members of the Organization accept, under Article 93 of the Charter, the conditions set forth therein to become parties to the Statute of the International Court of Justice.

25. The Secretary-General therefore considered that, in the circumstances, it might be appropriate for him to undertake the depositary functions as concerns the instruments in respect of the amendments to the Charter under Articles 108 and 109. The Government of the United States of America, which the Secretary-General consulted in its capacity as depositary of the Charter of the United Nations, concurred with that view.

26. Accordingly, the Secretary-General invited Member States to transmit to him, for deposit, the instruments of ratification of the said amendments adopted by the General Assembly by resolutions 1991 A and B (XVIII) of 17 December 1963.

6. No official other than the Secretary-General may be depositary; actual discharge of functions entrusted to the Office of Legal Affairs of the United Nations Secretariat

27. With respect to the actual discharge of depositary functions, the position of the Secretary-General is that all treaties concluded under United Nations auspices should be worded to confer depositary functions on the Secretary-General himself only and not on any subordinate official. It is then for him, as depositary, to decide which subordinate official will actually perform these functions on his behalf. In practice, the Secretary-General has assigned all his depositary functions to the Office of Legal Affairs of the Secretariat because of the extreme importance that those functions be performed in a legally correct and absolutely consistent manner and that all information on United Nations treaties be available in and published by one office. 12/

C. Acceptance of depositary functions by the Secretary-General

1. General principles

28. The Secretary-General's policy, as concerns the acceptance of depositary functions, has been in principle to restrict the assumption of depositary functions to 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 to regional treaties that are drawn up within the framework of the United Nations regional commissions and are open for participation to their entire membership.

29. The reasons for this policy are as follows:

(a) The task of the Secretary-General would be exceedingly burdensome if he were to act as depositary for all the many multilateral treaties, i.e., treaties concluded by more than two parties, concluded each year worldwide;

(b) The United Nations should not replace the specialized agencies and other international organizations as depositary of multilateral treaties concerning their specialized fields;

(c) In the case of the most restricted multilateral treaties (i.e., those whose parties, generally few in number, are known from the outset, such as the treaties between the five countries of the Nordic Council or the treaties establishing the European Communities), the depositary responsibilities are so closely linked to the application of the substantive clauses that they could

hardly be exercised by any entity other than a party to the treaty or an organ established by the treaty;

(d) Lastly and even more importantly, one should not exclude the possibility that a treaty, or its application by the parties, may be contrary to United Nations policies or even to its internal or international obligations or to other treaties of which the Secretary-General is the depositary. Thus, for example, the Secretary-General has not accepted to be the depositary of the agreement establishing the International Textiles and Clothing Bureau, which appeared to be at variance with the objectives of the General Agreement on Tariffs and Trade.

2. Exceptions

30. The acceptance of depositary functions could possibly however be extended to treaties which, while not meeting the criterion of universal participation or of participation open to all members of a regional commission, would be concluded under the auspices of the United Nations, i.e., treaties concluded within the framework of United Nations organs or of diplomatic conferences convened by the United Nations. This second accessory criterion would, in fact, usefully supplement the first. Since treaties concluded within the framework of organs away from Headquarters are not always submitted to the Secretary-General for prior approval and may have provided for duties that he may feel he cannot accept, the Secretary-General always reserves the possibility of making exceptions to the policy described in paragraph 29 above. Indeed, it remains in any event within the discretion of the Secretary-General to accept depositary functions for any multilateral treaty he deems appropriate. 13/ Thus, for example, the Secretary-General has accepted to be the depositary of the Articles of Association for the Establishment of an Economic Community of West Africa 14/ and the Agreement on the Conservation of Small Cetaceans and the Baltic and the Baltic and Northern Seas of 17 March 1992, 15/ which were not concluded under United Nations auspices and were open only to subregional participation.

D. Extended scope of depositary functions

1. Distinction between depositary and administrative functions

31. It should be noted that, in addition to depositary functions stricto sensu, a number of treaties also assign administrative functions to the Secretary-General, such as the drawing up and maintenance of a list of qualified jurists to act as conciliators in case of disputes (see Vienna Convention on the Law of Treaties, annex), or the transmittal to the parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 16/ of communications concerning the final outcome of proceedings brought in respect of crimes under article 2 of the Convention. These functions, although not depositary, stricto sensu, have been performed by the Office of Legal Affairs. However, other administrative duties related to the performance or the monitoring of a treaty, other than depositary duties, which are the responsibilities of the Secretary-General as chief administrative officer of the United Nations, have been entrusted to other competent Secretariat units. This is the case, for example, with communications under various conventions on human rights, under the Convention relating to the Status of Refugees, 17/ under the Convention on the Registration of Objects Launched into Outer Space, 18/ under the International Convention on the Suppression of

the Crime of Apartheid 19/ or the United Nations Convention on the Law of the Sea. 20/

32. By the same token, the convocation of subsequent conferences of the parties to a treaty is entrusted by the Secretary-General to the competent substantive Secretariat's units. Thus, a conference of the parties to the Convention against Torture held in 1992 was convened by the Centre for Human Rights of the Secretariat, which services the Conference. Similarly, the Review Conference of the Parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Techniques (ENMOD Convention), held in 1984, was convened by the Department for Disarmament Affairs. However, proposed amendments to be considered by a review conference are circulated in a formal depositary notification and so is the corresponding decision of the Conference (see annex III).

33. The assistance and services that the Secretary-General provides to review conferences in accordance with requests to that effect by the General Assembly 21/ are of an administrative nature, but cannot include soliciting participation in respect of the treaty in question, which would not be consistent with the apolitical role ascribed to depositaries under established international treaty law. Thus when the Second Review Conference of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modifications Techniques (ENMOD Convention) expressed the wish that the Secretary-General transmit a communication encouraging greater accession to the Convention, 22/ the Secretary-General felt that it was not for him, as depositary, to make such a call.

2. Providing legal opinions and treaty information

34. As the principal depositary, the Secretary-General is frequently consulted on treaty questions, inter alia, in respect of final clauses, amendment procedures, participation and competence of meetings of States parties. Such opinions have been requested by United Nations bodies, 23/ by specialized agencies and other international organizations, including commodity organizations, by other units of the Secretariat and by scholars and law firms. The practice of the Secretary-General was also taken into account during the negotiation of the Vienna Convention on the Law of Treaties.

35. Upon request, the Secretary-General, as depositary, provides up-to-date information on the status of the treaties deposited with him (in addition to the circulation of the publication Multilateral Treaties Deposited with the Secretary-General (ST/LEG/SER.E/-), including to other units of the Secretariat that service committees or meetings of States parties. Thus, for example, the Office of Legal Affairs provides the up-to-date information for inclusion in the Secretary-General's reports, such as his report 24/ to the Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, 25/ etc.

E. Assumption of depositary duties in regard to treaties deposited with the League of Nations

36. The League of Nations had been, before its dissolution, performing functions "pertaining to a secretariat" in respect of various treaties. The General Assembly, with the consent of the Members of the United Nations that were parties to the said treaties, declared, by resolution 24 (I) part I A of

12 February 1946, that it was willing to accept the custody of the said treaties and to charge the Secretariat of the United Nations with the task of performing, for the parties, the said functions, which in fact correspond to usual depositary functions. It was understood that this resolution constituted a general instruction to the Secretary-General to perform these functions, if and when States submitted instruments (ratification, withdrawal, etc.) or communications to him under these treaties. The Secretary-General would of course have to examine under the final clause of the treaties whether a State was eligible to do so. Moreover, the Secretary-General was to be guided in his actions by the practice of the Secretary-General of the League of Nations.

37. Inasmuch as a number of League of Nations treaties contained provisions whose execution depended on the exercise of certain functions or powers other than depositary functions, the United Nations decided to adopt various protocols to the said treaties, in order to allow for their continuing performance. Thus, under the Protocol signed at Lake Success on 11 December 1946 amending various such treaties, 26/ the Permanent Central Board and the Supervisory Body provided for in the said treaties were to continue their functions.

Chapter III

ORIGINAL TEXT

A. Preparation of the original

1. General principles

38. Multilateral treaties for which the Secretary-General acts as depositary are usually adopted under United Nations auspices, either by the General Assembly (e.g., the International Covenant on Civil and Political Rights) 27/ or by a Conference convened under a resolution adopted by the General Assembly (e.g., the United Nations Convention on the Law of the Sea) 20/ or under a resolution of the Economic and Social Council (e.g., the Convention on Road Traffic concluded at Vienna on 8 November 1968), 28/ although there have been a few exceptions (see para. 30 above). Once the treaty has been adopted in accordance with established customary international law, as reflected in the Vienna Convention on the Law of Treaties, a text of the said treaty is prepared by the Secretary-General, so that it may be signed by the representatives of the parties (see chap. VI below). It is prepared on the basis of the text as authenticated by the Final Act of the Conference or the resolution of the General Assembly or of the Economic and Social Council to which it is usually annexed, or by similar means. Once established, the Secretary-General retains custody of the said original.

39. In most cases, the multilateral agreements concluded under the auspices of the United Nations provide, in their final clauses, that they are open for signature by the representatives of States either for an indefinite period of time (e.g., the International Covenant on Civil and Political Rights) or until a certain date (e.g., the International Natural Rubber Agreement, 1979). 29/ Ratification, when required, may take place either at any time thereafter or until a set date. Some treaties are not opened for signature, but rather for accession only, and in such cases it does not appear necessary to prepare an original. Such is the case, for example, of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, 30/ and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the United Nations General Assembly on 21 November 1947. 8/ These cases, however, are exceptional and normally an original must be established.

2. Authentic languages

40. A comparison of the authentic texts precedes the physical work of collating the articles, arranging their layout and checking the texts. In the case of agreements concluded under the auspices of the United Nations, the number of authentic languages varies with the body adopting them. In most cases, agreements approved by the General Assembly provide, in their final clauses, that the texts are authentic in all official languages, i.e. at present Arabic, Chinese, English, French, Russian and Spanish. Only very exceptionally does the agreement contain no provisions on the subject. If the resolution approving the agreement is also silent on the point, such as is the case, for example, with resolution 317 (IV) by which the General Assembly adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, concluded at Lake Success, on 21 March 1950, 31/ the practice followed by the Secretary-General has been to consider as authentic all

official languages and to prepare the original accordingly. This practice was not, however, always followed: the Convention on the Privileges and Immunities of the United Nations is in English and French only.

41. In the case of agreements adopted by United Nations regional commissions, the authentic texts are generally in the official languages of the commission concerned.

42. Finally, there are the agreements adopted by conferences. These agreements are more diverse and the decision as to which text is to be authentic is made, in each case, by the participating States. For example, the text of the Olive Oil Agreement, 1986, 32/ is authentic not only in Arabic, English, French, Spanish, official languages of the United Nations, but also in Italian; the Agreement on the Conservation of Small Cetaceans in the Baltic and North Seas of 17 March 1992 is authentic not only in English, French and Russian, but also in German (the languages of the range States).

3. Multilingual title pages and signature pages

43. To the text of the treaty, in all its authentic languages, as adopted, the depositary adds a "multilingual" title page and "signature page" on which the names ("short names", i.e., the names used for all ordinary purposes in the United Nations) of the States concerned appear in all United Nations official languages in the English alphabetical order. These names are based on official communications from the Governments concerned as reflected in the United Nations Terminology Bulletin (ST/CS/SER.F/-). A special case occurred when the General Assembly, upon the recommendation of the Security Council, decided to admit a State to membership in the United Nations,

> "this State being provisionally referred for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia', pending settlement of the difference that has arisen over the name of the State".

The name of that State in the relevant signature page of treaties prepared by the Secretary-General is accordingly the name indicated in the corresponding terminology note TR/93/3 of 19 April 1993. This, of course, could create a difficulty for the Government of that State, inasmuch as the name in question is not based, as is normally the case, on a communication from the Government concerned but on the above-mentioned decision, which left unsolved the difference over the name of the State.

44. It is to be underlined that while the "multilingual" title page is established in all the authentic languages, the signature pages of treaties deposited with the Secretary-General are prepared only in the official languages of the United Nations, i.e., in the six official languages of the United Nations for global agreements; and in the relevant languages of the regional commission for the regional agreements. The reason is that the establishment of signature pages in non-official languages might raise terminology and diplomatic difficulties which the Secretary-General, as depositary, would not be in a position to resolve (for example, the translation of the name "German Democratic Republic" into Russian gave rise, at the time, to differences of opinion. Although in that case the difficulty had to be resolved, since Russian is an official language, such a difficulty could arise in the case of any language).

4. Subsequent authentic texts

45. From time to time, the Secretary-General has also prepared, as provided for in the testimonium of a treaty, an "additional" authentic text on the basis of other existing authentic texts. Such was the case for example with the Chinese text of the International Sugar Agreement, 1984 33/ and the International Tropical Timber Agreement; 34/ the testimonium of the later agreement reads as follows:

> "Done at Geneva on the eighteenth day of November, one thousand nine hundred and eighty-three, the texts of this Agreement in the Arabic, English, French, Russian and Spanish languages being equally authentic. The authentic Chinese text of this Agreement shall be established by the depositary and submitted for adoption to all signatories and States and intergovernmental organizations which have acceded to this Agreement."

Upon a request from the International Trade Law Commission, the Secretary-General has also established an Arabic text of the Convention on the Limitation Period in the International Sales of Goods. 35/ These texts were circulated by the Secretary-General and considered adopted as authentic texts in the absence of objections thereto within the period of 90 days indicated by the Secretary-General in accordance with the implicit approval procedure (see para. 55 below; see also annex IV).

46. A special situation occurred as concerns the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas. This Convention was initially adopted in English, as reflected in the Final Act, but on the understanding that the other languages' texts, which were also to be authentic, would be prepared by the Government of Sweden. At the request of that Government, the Secretary-General provided assistance in the preparation of those texts. But no implicit approval under the 90 days' procedure was implemented in this case by the Secretary-General, since the Secretary-General, as depositary, had not received instructions to that effect from the parties, which on the contrary, he understood, had consented that the additional text be considered as accepted without any additional formalities.

47. The Secretary-General also establishes, when so requested, the text of an amended convention. Such was the case for the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 (see article 22 of the Protocol) 36/ and for the Convention on the Limitation Period in the International Sales of Goods as amended by the Protocol of 11 April 1980 (see article XIV (2) of the Protocol). 37/ Although these amended texts were not to be opened for signature, they were prepared and circulated by the Secretary-General in the same manner as an original text (see annex V).

B. Correction of errors or of a lack of concordance in the original of a multilateral treaty

1. Identification of errors

48. In spite of the care taken in the preparation of original texts, corrections to the original text of a treaty may become necessary because of:

(a) A physical error in typing or printing, spelling, punctuation, numbering, etc.;

(b) A lack of conformity of the original of the treaty with the official records of the diplomatic conference which adopted the treaty; and/or

(c) A lack of concordance between the different authentic texts constituting the original of the treaty.

49. It is the responsibility of the depositary, who has custody of the original of the treaty, to initiate the correction procedure proprio motu or at the request of one or more of the States that participated in the elaboration and adoption of the treaty. Each apparent error must, of course, be thoroughly scrutinized by the depositary in order to determine whether it does fall in one of the categories mentioned above and further that it does not have the effect of modifying the meaning or substance of the text of the treaty. In case of doubt - i.e., if in the depositary's opinion the modification proposed does not seem wholly justified or is opened to dispute - the depositary shall endeavour to persuade, through consultations, the State which proposed the correction to withdraw its proposal; in the last resort, the Secretary-General would refer the matter to the contracting parties and the signatory States.

2. Communication of the proposed corrections to States

50. Until 1964, the Secretary-General's practice was apparently not entirely consistent, the list of States which were to receive notification of proposed corrections being drawn up on an ad hoc basis, depending, for instance, upon whether the treaty was open for signature or was in force, whether the number of signatory States was large or small, whether certified copies had been circulated among States and whether there were at the time any contracting parties. The usual practice was apparently to communicate proposed corrections to all States that had signed or might sign the treaty: this method was followed, for example, in the case of the 1954 Convention relating to the Status of Stateless Persons and the 1956 Customs Convention on the Temporary Importation of Commercial Road Vehicles, but there were some cases where proposed corrections were more widely circulated, such as the proposed corrections to the Chinese text of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which were communicated to all States whether or not Members of the United Nations; or the proposed corrections to the 1948 Havana Charter establishing an International Trade Organization, which were communicated to all the States that had adopted the text of the convention.

51. Since 1964, the constant practice of the Secretary-General has been to communicate proposed corrections not only to signatory States but to all the States that participated in the elaboration of the treaty in question, which in practice means all States represented at the Conference or the meeting that adopted the treaty, and all signatory States and contracting parties. This practice was sanctioned by articles 26 and 27 of the International Law Commission's draft on the law of treaties, as adopted in 1962 at its fourteenth session: draft article 27 provided that "the depositary shall bring the error to the attention of all the States which participated in the adoption of the text and to the attention of any other States which may subsequently have signed or accepted the treaty ...". 38/ This procedure was followed on a number of occasions, for example in the case of errors in the original of the 1964 Agreement establishing the African Development Bank, and in that of the Convention on the Limitation Period in the International Sales of Goods and of the International Tin Agreement, 1975. Subsequently, the communication of the proposed correction was extended to all parties to which a treaty is open, so that all potential parties are made aware of the status of the treaty. It is to

be understood, however, that only signatories and contracting parties may object to the correction (see para. 58 below).

52. It will be noted that the practice of the Secretary-General differs in this respect from that in article 79, paragraph 2, of the Vienna Convention, which provides for the communication of proposed corrections only to the signatory States and to the contracting States.

3. Procedure relating to the acceptance of objections to proposed corrections

53. When studying the question of the acceptance of proposed corrections and of any objections to corrections to the original of a treaty, the International Law Commission noted, in its report to the General Assembly on the work of its eighteenth session, 39/ that, if the matter was placed on the level of a right rather than simply of diplomacy, only contracting States should be considered as having an actual legal right to a voice in any decision regarding a correction. However, the practice of the Secretary-General, which in fact is the practice codified by the Vienna Convention, is also to accept objections from signatory States. This practice is based on the fact that a State which, by its signature, has bound itself to "refrain from acts which would defeat the object and purpose of a treaty" pending the entry into force of the treaty (see article 18 (1)) must be allowed to express an opinion on proposed corrections to a text that is in the process of being incorporated into its domestic law (for the legal effects of objections see paras. 61 and 62 below).

54. As concerns States which are neither signatories nor contracting parties, when exceptionally such a State objected to a correction, such as was the case when corrections were proposed to the 1974 Customs Convention on Containers, the said objections were communicated to all interested States for information, but were not considered as valid for the purpose of rejecting the corrections.

4. Time-limit for objections to proposed corrections

55. Objections to the correction of the original must be notified to the depositary within a certain period of time; article 79, paragraph 2, of the Vienna Convention provides that the depositary "shall specify an appropriate time-limit within which objection to the proposed correction may be raised". In accordance with customary international practice, the Secretary-General normally sets a time-limit of 90 days from the date shown on the notification (see annex VI).

56. If he receives an objection to the proposed corrections within the allowed time-limit, the Secretary-General so notifies the parties concerned, also by means of a depositary notification. If the objection is received after the time-limit has passed and cannot therefore have legal effects, the Secretary-General, as depositary, similarly informs the parties concerned of the receipt of the objection, which, however, he qualifies as "communication" and not "objection" in the relevant depositary notification.

57. It should be noted, that in establishing the time-limit for objections to proposed corrections, account will be taken of factual circumstances such as the nature and the number of proposed corrections, and whether or not the treaty is in force. The example may be cited of the corrections to the original of the 1962 Coffee Agreement. Because the errors were obviously typographical, and

because the usual time-limit of 90 days would have exceeded the period during which the treaty was opened for signature, the Secretary-General set a 30-day time-limit for objections.

58. During the period specified by the Secretary-General, any interested State will be entitled to raise an objection, either because it does not consider the proposed correction justified or because it considers the correction procedure itself inappropriate. For instance, a State may well consider the period allowed for stating its position to be inadequate, or may, on the other hand, find it too long in view of pressing domestic constitutional requirements. More importantly, a State may object on the basis that a procedure for consultation by tacit consent is not appropriate because the proposed correction would affect the substance of the treaty and would therefore result in an indirect amendment, outside of the prescribed amendment procedure.

5. Procès-verbal of correction of the original

59. In the absence of objections to the proposed corrections within 90 days, the corrections are deemed adopted. The corrections (deletions, additions, etc.) are then physically effected in the original and initialled by an authorized official, and a corresponding procès-verbal of rectification circulated under cover of a depositary notification. The procès-verbal, which is signed by the Legal Counsel or the officer in charge of the Office of Legal Affairs, indicates, in substance, that the Secretary-General, acting as depositary and taking into account errors in the original of the treaty, has duly circulated the text of the proposed corrections; and that, in the absence of objections within 90 days (or the relevant period), he has caused the said corrections to be effected in the original, and these corrections also apply to the certified copies if the copies have already been circulated (see annex VII). The procès-verbal is normally dated as of the expiry of the 90 day period, i.e., the date when the corrections have been accepted and on which the corrections should accordingly be made. Owing to oversights, this practice has not always been followed, and it has happened that the procès-verbal was dated the day it was physically signed.

6. Simplified procedure

60. An exceptional procedure has been applied by the Secretary-General in respect of corrections to the texts of the Regulations annexed to the Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts of 20 March 1958. 40/ These Regulations are of a highly technical nature, with a vast amount of figures and formulas, and it happens not infrequently that typographical errors are discovered that require correction. Initially, when an error was discovered, the usual 90-day procedure was applied. However, taking into account, inter alia:

(a) The frequent occurrence of errors being discovered after the entry into force of the Regulations (even a small typographical error would require a full-fledged procedure);

(b) The amount of work involved in carrying out the correction procedure;

(c) The fact that only a limited number of States are parties to the Agreement, and that all are represented at the Working Party on the Construction

of Vehicles, a subsidiary organ of the Inland Committee of the Economic Commission for Europe which is the forum in which the proposed required corrections are discussed and approved; and

(d) The non-existence of an original authenticated text of the regulations in a true sense, since the Regulations are initially adopted by the Working Party as a working document,

it was decided as of 1969 to dispense with the normal correction procedure and simply to communicate to all parties concerned the text of the corrections as approved by the Working Party, and to request that they make the appropriate corrections in the Regulations (see annex VIII). It must be underlined that this simplified procedure, which is somewhat in the nature of corrections to certified copies (see chap. IV), is applied exclusively in the case of corrections to the Regulations annexed to the above-mentioned Convention; and of course also that the corrections must not be in the nature of an amendment, which could only be effected in accordance with the relevant procedure.

7. Legal effects of objections to proposed corrections

61. Is an objection by one State sufficient to block a proposed correction? On this point, article 79, paragraph 2 (b), of the Vienna Convention provides that the depositary shall communicate the objection to the signatory States and to the contracting States, but this does not resolve the problem of the legal effects of an objection to a proposed correction of the original. The gap left in that respect by the Vienna Convention already existed in the International Law Commission's draft articles on the law of treaties (art. 25), a fact which did not escape the notice of some members of the Commission. 41/ In order to prevent the exercise of a kind of veto by the party raising the objection, would it not be desirable to provide that the dispute should be settled by the same majority as had been required for the adoption of the treaty? The matter was finally dropped on the ground that it was wiser not to confine States within a rigid system, but to let them settle any difficulties among themselves. In practice, the Secretary-General, acting as depositary, i.e., as the representative of all the parties to the treaty, has always obtained, through consultation, the withdrawal of the objections when appropriate.

62. The Secretary-General will of course always pursue this practice of consultation. In the event, however, that objections to proposed corrections would not be withdrawn, the Secretary-General might consider being guided by the suggestions made in that respect during the work of the International Law Commission in 1962, as described in paragraph 61 above.

Chapter IV

CERTIFIED COPIES

A. Purpose

63. Since only a single original is established, it is the depositary's responsibility to prepare and transmit to the States concerned certified copies of the said original. This formality replaces the exchange of multiple original instruments that otherwise would have to take place between all the negotiating parties. The certified copies are normally used by Governments when submitting the agreement to their competent organs for whatever approval action is required under their particular constitutional procedures.

B. Contents and preparation

64. Certified copies must reproduce faithfully and in full the provisions of the original. Formerly, the certified copies always included the final act, if any, of the Conference that had adopted the treaty and also the signature pages. If the agreement was to remain open for signature without any time-limit or if the date of closure was distant, the certified copies were prepared with reproductions of the signatures affixed up to the date on which the copies were prepared. However, under more recent practice, normally only the text of the agreement is reproduced in the certified copies. Final acts are included only when they contain substantive provisions and the signature pages are no longer reproduced because, as indicated above, additional signatures often continue to be affixed on the original, even after the certified true copies are prepared, thus creating a risk of confusion as to the signatories. Furthermore, the main purpose of certified copies is to allow for the completion of internal formalities by the parties and therefore inclusion of the signature pages is not necessary. In fact, a number of additional copies of the certified true copies may have to be reproduced by the parties, and signature pages are thus rather an inconvenience. In fact, one State has already formally requested that certified true copies not include signature pages. Finally, the complete text of the treaty, including the signature pages, is published in the United Nations Treaty Series upon its entry into force, and the Secretary-General duly informs the parties of all signatures as they are affixed. A number of other depositaries also establish certified true copies without signature pages.

C. Format of the certification

65. The format of the certification used for this purpose has been modified. Originally, it was worded as follows:

"Certified true copy.
"For the Secretary-General:"

followed by the signature of the Legal Counsel.

66. This formula was not considered fully satisfactory as the conformity of the copy with the original was merely implied. The date when the certified copy was established was also lacking. A more explicit formula has therefore been adopted. As affixed, for example, on the certified copies of the Sugar Agreement, 1984, it reads as follows:

"I hereby certify that the foregoing text is a true copy of the International Sugar Agreement, 1984, concluded at Geneva on 5 July 1984, the original of which is deposited with the Secretary-General of the United Nations, as the said Agreement was opened for signature.

"For the Secretary-General
"The Legal Counsel

"United Nations, New York
"29 August 1984"

67. This formula appears in English and French in two parallel columns at the end of the text of the agreement. The signature of the Legal Counsel is affixed below and between the two versions (see annex IX).

D. Absence of an original text

68. The preparation of certified copies has presented some difficulty when no original text was drawn up. Such was the case of the Convention on the Privileges and Immunities of the United Nations 30/ and the Convention on the Privileges and Immunities of the Specialized Agencies, 8/ which were adopted by resolutions of the General Assembly and which did not provide for their signatures but only for the deposit of instruments of accession (see para. 39 above). The Secretary-General, when required to provide certified copies of these conventions, transmits their text as it appears in the volume of the resolutions adopted by the General Assembly during the session concerned and certifies the authenticity of that document. This difficulty is of course avoided if the text adopted provides for the preparation of an authentic copy signed by the President of the General Assembly and by the Secretary-General (see for example art. 46 of the Revised General Act for the Pacific Settlement of Disputes, of 28 April 1949). 42/

69. A somewhat similar situation occurred when the Secretary-General was requested to prepare the texts of amended conventions (see para. 45 above). The Secretary-General prepared the said texts, as he would have for an original, and he duly circulated certified copies of the texts of the amended conventions with the appropriate certification attached. As appended to the corresponding convention, such certification reads as follows:

"I hereby certify that the foregoing text of the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Protocol amending the said Convention, has been established by the Secretary-General in accordance with article XIV (2) of the Protocol of 11 April 1980.

"For the Secretary-General,
"The Legal Counsel

"United Nations, New York
"18 September 1989"

E. Recipients of certified copies

70. Two certified copies are sent under cover of a depositary notification (see annex X) by the depositary to all States and entities which may become parties to the treaty, in accordance with the relevant provisions of the treaty (for a determination of such States and entities, see chap. V).

71. Since the certified copies are thus printed in a limited number and owing, inter alia, to an increase in the number of newly independent States and therefore of possible participants to a treaty, it has been necessary, from time to time, to print new editions of a number of certified copies. If there have been no corrections either to the original or to the certified copies, the new printing simply reproduces the first certified copies, including the initial certification. If, however, corrections have been effected, they are included in the new edition of the certified copies, and a new certification is established.

F. Correction of errors

72. As is the case for originals, errors may occur in the certified copies of a treaty. The necessary correction of such errors is indicated by means of circular depositary notifications to the States concerned. Prior consent of those States to the correction of the certified copies is not required, since the original text is not involved. If the error did not occur when establishing the certified copies on the basis of the original, but existed initially in the original, which then has to be corrected (see paras. 48-62 and above), the corresponding depositary notification will specify that the correction - of the original - once deemed approved, shall also apply to the certified true copies (if already circulated).

Chapter V

STATES AND INTERNATIONAL ORGANIZATIONS WHICH MAY BECOME PARTIES

A. General principles

73. The Secretary-General must ascertain whether a State or an organization may become a party to a treaty deposited with him. Many agreements do specify in their pertinent clauses which categories of States or organizations may become parties thereto. For example, the International Natural Rubber Agreement, 1987 43/ was open to the Governments invited to the United Nations Conference on Natural Rubber, 1983. The Convention on the Prevention and Punishment of the Crime of Genocide, concluded at Paris on 9 December 1948, 44/ is open to the participation of "any Member of the United Nations and of any non-member State which has received an invitation" from the General Assembly.

74. Other conventions, for example the Convention on the Declaration of Death of Missing Persons, 45/ have provided for the participation of non-member States upon the invitation of the Economic and Social Council or in their capacity as Parties to the Statute of the International Court of Justice.

75. Amending protocols are normally open only to the parties to the treaties that are being amended (see para. 254).

76. A very special case is that of the United Nations Convention on the Law of the Sea, 20/ article 305 of which specifies in great detail which entities may participate in the Convention and even contains an annex concerning the participation by international organizations:

"Article 305

"Signature

"1. This Convention shall be opened 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; 46/

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

77. Another special characteristic of the Convention on the Law of the Sea relates to its Final Act. Normally, the final act of a diplomatic conference is in the nature of a procès-verbal and is signed by those concerned according to the capacity in which they participated in the conference. However, in the case of the Third United Nations Conference on the Law of the Sea, signature of the Final Act also entitles those signatories that had not signed or acceded to the Convention itself to participate in the work of the Preparatory Commission as observers 47/ (see resolution I of the Conference, para. 2). This right was therefore of great importance to those entities mentioned in article 305, paragraph 1, of the Convention, particularly to those which were not qualified at the time to sign the Convention (for example, the Trust Territory of the Pacific Islands).

78. In fact, the Conference not only adopted the text of the Convention, but also prepared and approved the signature pages of the Convention and that of the Final Act. Thus, when an international organization that had participated in the works of the Conference but had not been included in the said signature pages of the Final Act indicated its desire to sign the Final Act, the Secretary-General declined to accept the signature of that organization. The Secretary-General suggested to that organization that a proposed correction be circulated under the 90 days procedure (see para. 55 above), but that organization chose not to pursue that option.

B. The "Vienna formula"; the "all States formula"; the practice of the General Assembly

1. The "Vienna formula"

79. But when a treaty is open to "States", how is the Secretary-General to determine which entities are States? If they are Members of the United Nations or Parties to the Statute of the International Court of Justice, there is no ambiguity. However, a difficulty has occurred as to possible participation in treaties when entities which appeared otherwise to be States could not be admitted to the United Nations, nor become Parties to the Statute of the International Court of Justice owing to the opposition, for political reasons, of a permanent member of the Security Council. 48/ Since that difficulty did not arise as concerns membership in the specialized agencies, where there is no "veto" procedure, a number of those States became members of specialized agencies, and as such were in essence recognized as States by the international community. Accordingly, and in order to allow for as wide a participation as possible, a number of conventions then provided that they were also open for participation to States members of specialized agencies. For example, the Vienna Convention on the Law of Treaties was opened 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. This type of entry-into-force clause was called the "Vienna formula".

80. Thus, whenever a treaty specified, under the Vienna formula or otherwise, which entities could become parties thereto, the Secretary-General had no

difficulty in complying with the participation provision of the treaty concerned.

2. The "all States formula"

81. Nevertheless, a number of treaties adopted by the General Assembly were open to participation by "all States" without further specifications (see, for example, the Convention on the Suppression and Punishment of the Crime of Apartheid 19/ and the Convention on the Prevention and Punishment of Crimes against Diplomatic Agents and Other Internationally Protected Persons). 16/ In reply to questions raised in connection with the interpretation to be given to the all States formula, the Secretary-General has on a number of occasions 49/ stated that there are certain areas in the world whose status is not clear. If he were to receive an instrument of accession from any such area, he would be in a position of considerable difficulty unless the Assembly gave him explicit directives on the areas coming within the "any State" or "all States" formula. He would not wish to determine, on his own initiative, the highly political and controversial question of whether or not the areas whose status was unclear were States. Such a determination, he believed, would fall outside his competence. He therefore stated that when the "any State" or "all States" formula was adopted, he would be able to implement it only if the General Assembly provided him with the complete list of the States coming within the formula, other than those falling within the "Vienna formula", i.e. States that are Members of the United Nations or members of the specialized agencies, or Parties to the Statute of the International Court of Justice.

3. The practice of the General Assembly

82. This practice of the Secretary-General became fully established and was clearly set out in the understanding adopted by the General Assembly without objection at its 2202nd plenary meeting, on 14 December 1973, 50/ whereby "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".

83. The "practice of the General Assembly", referred to in the above-mentioned understanding is to be found in unequivocal indications from the Assembly that it considers a particular entity to be a State even though it does not fall within the "Vienna formula". Such indications are to be found in General Assembly resolutions, for example in resolutions 3067 (XXVIII) of 16 November 1973, in which the Assembly invited to the Third United Nations Conference on the Law of the Sea, in addition to States at that time coming within the long-established "Vienna formula", the "Republic of Guinea-Bissau" and the "Democratic Republic of Viet Nam", which were expressly designated in that resolution as "States".

C. Applications of the practice of the General Assembly

1. Colonial countries upon independence

84. Further decisions of the General Assembly, taken within the context of its deliberations on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (see para. 264 below), noted with satisfaction the accession of various countries to independence. Such was the case, for example, with the decision concerning Brunei taken within the context of agenda item 18 at the thirty-eighth session. These decisions have been considered by the Secretary-General as allowing for the inclusion of those newly independent countries in the "all States" formula. 51/

2. Cook Islands

85. The question of whether the Cook Islands was an "independent" entity, i.e. a State, was also raised. For a period of time it was considered that, in view of the fact that the Cook Islands, though self-governing, had entered into a special relationship with New Zealand, which discharged the responsibility for the external affairs and defence of the Cook Islands, it followed that the status of the Cook Islands was not one of sovereign independence in the juridical sense. Moreover, the General Assembly, in its resolution 2064 (XX) of 16 December 1965 on the question of the Cook Islands, had reaffirmed the responsibility of the United Nations "to assist the people of the Cook Islands in the eventual achievement of full independence, if they so wish, at a future date". That resolution, which was adopted in view of a change in the status of the Cook Islands, further indicated that the latter had not yet attained full independence within the meaning of the term in United Nations usage. 52/ It followed that, unless specifically invited to participate in a treaty, the Cook Islands could not invoke the "all States" clause.

86. However, in 1984, an application by the Cook Islands for membership in the World Health Organization 53/ was approved by the World Health Assembly in accordance with its article 6, and the Cook Islands, in accordance with article 79, became a member upon deposit of an instrument of acceptance with the Secretary-General. In the circumstances, the Secretary-General felt that the question of the status, as a State, of the Cook Islands, had been duly decided in the affirmative by the World Health Assembly, whose membership was fully representative of the international community. The guidance the Secretary-General might have obtained from the General Assembly, had he requested it, would evidently have been substantially identical to the decision of the World Health Assembly. The same solution was adopted by the Secretary-General when Niue, in 1994, applied for membership in the World Health Organization. Moreover, on the basis of the Cook Islands' membership in the World Health Organization, and of its subsequent admittance to other specialized agencies (Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization and International Civil Aviation Organization) as a full member without any specifications or limitations, the Secretary-General considered that the Cook Islands could henceforth be included in the "all States" formula, were it to wish to participate in treaties deposited with the Secretary-General.

3. Marshall Islands

87. A similar situation occurred in respect of the Marshall Islands. Upon its admission to the International Civil Aviation Organization, the Government of the Marshall Islands indicated that it wished to participate in treaties deposited with the Secretary-General. However, a difficulty existed in that, at the time, the Marshall Islands was still under trusteeship under Security Council resolution 21 (1947) of 2 April 1947, and that, furthermore, there was some question as to whether the procedures for admission of the Marshall Islands in the International Civil Aviation Organization had been fully observed. Admission apparently had been effected on the basis of article 92 of the Chicago Convention, which provides that States Members of the United Nations, associates of the United Nations and States neutral in the Second World War could accede simply by depositing an instrument with the United States of America, the depositary. In all other cases, new members could be admitted, under article 93, only by a vote of four fifths of the members of the International Civil Aviation Organization. The Secretary-General, in view of these ambiguities, decided that he was not at the time in a position to act on instruments that would be presented to him; it was possible that he would have to inform the Security Council and/or the Trusteeship Council. However, the matter was resolved when by its resolution 683 (1990) of 22 December 1990, the Security Council determined that, in the light of the entry into force of new status agreements, inter alia, for the Marshall Islands, the objectives of the Trusteeship Agreement had been fully attained and the applicability of the Trusteeship Agreement had terminated. Furthermore, the Secretary-General was informed that there had been no formal objections by the members of the International Civil Aviation Organization to the admission to membership of the Marshall Islands in the organization.

4. States not meeting the "Vienna formula" requirements

88. In 1969, a State Member of the United Nations forwarded to the Secretary-General, as depositary, a communication from an entity calling itself a State and declaring that it was ready to accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968. 54/ No depositary action was taken since that entity did not meet the requirements of the "Vienna formula" provided for in the Convention (not to mention that the communication was not an instrument in due form). However, the said communication was circulated as a document as requested by the Member State. 55/

89. A special difficulty arose upon the adoption of resolution 47/1 of 22 September 1992, by which the General Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and therefore decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it should not participate in the work of the General Assembly; the resolution was interpreted by the Secretariat to apply to subsidiary organs of the General Assembly, as well as conferences and meetings convened by it. Consequently, the Federal Republic of Yugoslavia (Serbia and Montenegro), was not invited to participate in conferences convened by the Assembly (e.g., the World Conference on Human Rights). However, this was without effect on the capacity of the Federal Republic of Yugoslavia (Serbia and Montenegro) to participate in treaties, including those deposited with the Secretary-General.

D. United Nations Council for Namibia

90. The question also arose of the legal status of the United Nations Council for Namibia for the purpose of its participation in treaties. The Council for Namibia was established as a subsidiary organ of the General Assembly by resolution 2248 (S-V) of 19 May 1967. As a subsidiary organ, it was responsible to, and under the authority of, the General Assembly in the same way as any other subsidiary organ. Unlike other subsidiary organs, however, 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 and it could, therefore, be considered an organ sui generis for certain purposes. 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 continued, at the time, to exercise de facto control over the Territory, the essential element was that the Council had the de jure competence, inter alia, to enact any necessary laws and recognitions. Indeed, the Council became a party to many treaties deposited with the Secretary-General, such as the Vienna Conventions on Diplomatic Relations and the United Nations Convention on the Law of the Sea, as well as a party to the constituting acts of the Food and Agriculture Organization of the United Nations, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization.

E. Regional agreements

91. Difficulties have also arisen in respect of the participation in regional agreements adopted within the framework of the United Nations regional commissions (States that are not Members of the United Nations may nevertheless be granted full membership of a regional commission by the Economic and Social Council under Article 68 of the Charter).

92. Certain of these regional agreements provide that they are open, not only to the States members of the Commission, but also to regional economic integration organizations and to States having consultative status with the Commission (for the question of the general participation of international organizations in treaties see paras. 98 and 99 below). As concerns those States, the Secretary-General must ascertain whether they do have such a consultative status.

93. Such a case occurred when an entity born from the separation of Yugoslavia, and not yet a Member of the United Nations, expressed an interest in being admitted, in a consultative capacity, to the Economic Commission for Europe. Such an admittance would allow for its participation in treaties adopted within the framework of the Economic Commission for Europe such as the agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts. 40/ Under paragraph 8 of the terms of reference of the Economic Commission for Europe, the Commission may admit, in a consultative capacity, European nations not Members of the United Nations. However, it was pointed out that paragraph 8 of the terms of reference should not be interpreted to mean that the Commission could make, on its own authority, determinations such as to the status of purported States. As is made clear in paragraph 1 of its terms of reference, the Commission acts within the framework of the policies of the United Nations and

subject to the general supervision of its parent organ, the Economic and Social Council. And further, that in accordance with a footnote to the word "State" in rule 72 (1) of the rules of procedure of the Economic and Social Council, "It is the understanding of the Economic and Social Council that in discharging its functions under this rule it will follow the practice of the General Assembly in implementing an all States clause, and that in all cases where it is advisable it will request the opinion of the Assembly before taking appropriate decisions". Since the entity concerned did not at the time meet the "all States" criteria, and even though the entity had been "recognized" by a number of States, it was decided that the entity concerned could not be admitted, even in a consultative capacity, which would preclude its participation in the Agreements concerned.

94. A somewhat similar situation occurred when a non-European State, which was however a Member of the United Nations, indicated its interest in becoming a party to the Convention on the Contract for the International Carriage of Goods by Road, 56/ on the basis of its article 42 (2), which provides that such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become contracting parties to the Convention by acceding thereto after its entry into force. But in that case it was confirmed that under the said provision and since any State "may" participate in certain activities of the Economic Commission for Europe, the Convention was in fact opened to all States, even non-European, if admitted to participate in the relevant activities of the Commission.

F. Participation by non-independent entities

95. Treaties may provide for the participation of entities other than independent States. Thus, for example, when the question of the accession of Southern Rhodesia to the Protocol of 1963 57/ for the prolongation of the International Sugar Agreement of 1958 58/ was raised, the Secretary-General recalled 59/ that, under its article 5 (4), the Protocol is "opened for accession by the Government of any Member of the United Nations or any Government invited to the United Nations Sugar Conference, 1963 ...". Southern Rhodesia was not a Member of the United Nations, but the question was raised as to whether Southern Rhodesia's application for accession could be accepted as emanating from a "Government invited to the United Nations Sugar Conference, 1963". The legality of such an acceptance was questioned at the seventeenth session of the International Sugar Council, inter alia, on the ground that Southern Rhodesia was not an independent sovereign State.

96. In that connection, there could be no doubt as to the fact that Southern Rhodesia was not an independent State, and indeed the international status of Southern Rhodesia as a Non-Self-Governing Territory within the meaning of Chapter XI of the Charter was specifically confirmed by the General Assembly. 60/ However, in considering the question raised, account was also to be taken of the fact that on several past occasions contracting States to commodity agreements concluded under the auspices of the United Nations had accepted that Governments of areas that were not fully independent sovereign States should nevertheless be accepted as parties. Such was the case of the Federation of Rhodesia and Nyassaland, which was invited to several commodity conferences (e.g., the Olive Oil Conference of 1955, the Wheat Conference of 1956 and the Sugar Conference of 1956) and which was a party in its own name to the International Wheat Agreements of 1959 and 1962. The Secretary-General concluded that the Sugar Council, having been entrusted with the responsibility

of determining, in agreement with the acceding "Government", the number of the latter's votes in the Council, and having received broad functions "as are necessary to carry out the terms of the Agreement" (art. 28 (7)), the Council had sufficient authority to make the necessary determination as to the participation of Southern Rhodesia with regard to the Protocol under its paragraph 5 (4).

97. There exist a number of other cases where participation by entities other than independent States is expressly authorized under specific provisions of the treaty. In some cases, such entities are allowed to participate as "associate members" of an organization, but it may also be that the nature of the membership is not specified. There exist a number of examples of such participation by non-independent entities: thus, for example, Hong Kong is a party to the General Agreement on Tariffs and Trade and a member of the World Meteorological Organization; the Netherlands Antilles and Aruba are members of the Universal Postal Union; and Macao is a member of the Asian and Pacific Development Centre. 61/ Such entities, which are not fully responsible for their own international relations, are however therefore still considered by the United Nations and the Secretary-General to be not fully sovereign independent States and accordingly do not fall within the purview of the "all State" clause and cannot participate in treaties open to "States". When such entities, however, attain independence and become full-fledged States, their status will change accordingly. Thus, for example, Brunei Darussalam, which was an "associated member" of the Asia-Pacific Telecommunity 62/ became a member when, upon its independence, it deposited on 27 March 1986 an instrument of accession to the Constitution of the Telecommunity. 63/

G. International organizations

98. Finally, there is the question of the participation of international organizations in treaties. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 3/ concluded on 21 March 1986, in essence codified the practice on the matter and is modelled on the Vienna Convention on the Law of Treaties, although of course with the features made necessary by the specificity of international organizations. Participation by international organizations depends, as for States, upon the relevant provisions of the treaty. However, certain treaties which cannot be implemented by international organizations by reason of their nature and of the consequential absence of competence of international organizations in their respect are not open to international organizations. Such is the case, inter alia, of the human rights conventions. Conversely, a number of multilateral treaties concerning commodities, fishing, trade, etc., are open to international organizations. The treaty usually identifies the organizations to which participation is open or specifies the characteristics and competence that the organization must possess. Thus, for example, the International Coffee Agreement, 1976, 64/ provides in its article 4, paragraph 3:

> "Any reference in this Agreement to a Government shall be construed as including a reference to the European Economic Community, or any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements."

In the same fashion, article 24 of the Convention for the Protection of the Mediterranean Sea against Pollution of 16 February 1976, 65/ deposited with the Government of Spain, provides that the Convention and protocols:

> "... shall also be open until the same date for signature by the European Economic Community and by any similar regional economic grouping ..."

Equally, article 4 of the International Cocoa Agreement, 1975, 66/ provides as follows:

> "1. Any reference in this Agreement to a 'Government' shall be construed as including a reference to any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature or to deposit of instruments of ratification, acceptance or approval or to notification of provisional application or to accession by a Government shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, or to deposit of instruments of ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations."

99. Some treaties provide that organizations may become parties to a treaty only if its constituting member States are already parties to the treaty. Thus, the first paragraph of article VIII (a) of the Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November 1950 concluded at Nairobi on 26 November 1976, 67/ provides as follows:

> "VIII
>
> "1. (a) 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."

Accordingly, the Secretary-General felt that he was not in a position to accept the signature of the Protocol by the European Economic Community until all its constituting members had themselves become parties to the Protocol.

H. Liberation movements

100. In response to separate requests from two national liberation movements, addressed to the Secretary-General in his capacity as depositary of the International Coffee Agreement, 1968, 68/ with regard to membership in the International Coffee Organization, the Secretary-General's position was that membership in the International Coffee Organization and other matters relating to the organization were governed by the provisions of the International Coffee Agreement. Aside from the depositary functions which he exercises with respect to the Agreement, the Secretary-General has no authority with respect to the Agreement which established the organization. Article 3 of the Agreement provides for membership in the organization of contracting parties and their dependent Territories; where a dependent Territory achieves independence, article 65 of the Agreement provides for the procedural steps to be followed in

order for the Government of such a Territory to assume the rights and obligations of a contracting party. In the absence of recognition accorded by the members of the international community, that is to say action taken by a political organ of the United Nations or one of the specialized agencies, the Secretary-General has no authority to grant recognition to a Government. Once such recognition is accorded by the members of the international community, however, the Secretary-General would, in accordance with the provisions of article 65 of the Agreement, fulfil his depositary functions. 69/

Chapter VI

FULL POWERS AND SIGNATURES

A. Authorities representing the State without full powers

101. In accordance with recognized customary international treaty law, as codified by the Vienna Convention on the Law of Treaties, 3/ only heads of State, heads of Government and Ministers for Foreign Affairs (referred to hereinafter as "qualified authorities") are, by virtue of their functions, and without having to produce full powers, considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty, including their signature with or without reservations (see article 7 (2) (a) of the Convention). All individuals other than these authorities must produce full powers, inter alia, to sign treaties or make certain notifications, etc. (see paras. 104-107 and 110 below).

B. Authorities issuing the full powers: specific and general full powers

102. Full powers must be issued and signed by one of the three qualified authorities listed above and must unambiguously empower the representative of the Government concerned to sign the treaty or treaties covered by his full powers. But there is no systematic verification of the authenticity of the signature of the authority, since the full powers are most generally produced by the permanent representative duly accredited to the United Nations. Usually the full powers are limited, in that they specify the treaty or treaties in respect of which the full powers are granted (see annex XI). However, full powers may also be "general", i.e. full powers that do not specify the treaty to be signed, but rather authorize the representative to sign all treaties of a certain kind, most often all the treaties adopted by an organization. Thus, some permanent representatives to the United Nations are in possession of such general full powers to sign all agreements adopted by the General Assembly and deposited with the Secretary-General; these full powers are either included in their credentials to the United Nations or contained in a separate instrument (see annex XII). Representatives to conferences convened under the auspices of the United Nations for the purpose of preparing specific agreements are also frequently given general full powers with respect to all agreements which may be adopted during the conference or any of its sessions (see also para. 109 below).

103. It must be underlined, however, that full powers, whether specific or general, must be granted to a given individual and indicate his name and surname. Full powers given, for example, "to the permanent representative" of a State to the United Nations cannot be accepted. By the same token, valid full powers given to the permanent representative duly identified by his name, cannot be used by his deputy or by the permanent representative ad interim.

C. Formalities for which full powers are required

104. Full powers are most frequently granted to allow for the signature of a treaty and, where appropriate, to make related declarations or reservations at that time. The declarations or reservations should in principle be inserted in the original of the treaty together with the signature. However, for practical reasons, the text of the said declarations and reservations are almost always

(except on occasions for the short and frequent reservation "signature affixed subject to ratification") handed out to the depositary at the time of signature, on the understanding that such declarations or reservations are deemed to accompany the signature. The Secretary-General, as depositary, when informing the parties concerned of the signature, will of course also include the texts of the declaration or reservation (see annex XIII).

105. Full powers are also required for all persons other than the three qualified authorities, and even for permanent representatives to the United Nations, to make declarations or notifications in the nature of binding instruments that would extend or modify the commitments of a participant, such as a notification of provisional application, territorial extension, declarations made under Article 36, paragraph 2, of the Statute of the International Court of Justice recognizing as compulsory the jurisdiction of the Court, etc. (see para. 149). This practice takes into account the importance of these notifications or declarations, which are as binding on the State as would be an instrument of accession.

106. It should be noted that, even for signatures affixed ad referendum, the plenipotentiaries of the Governments concerned must also submit full powers, and in that respect no distinction has been made between a signature made ad referendum and one affixed subject to ratification (see also para. 112).

107. It is not necessary, however, to produce full powers simply to deposit an instrument or a notification duly signed by one of the three qualified authorities, especially when the deposit is effected by the permanent representative or a member of the permanent mission to the United Nations or under cover of an official note.

D. Verifications

108. Before accepting the full powers, the Secretary-General must ascertain whether the State concerned is among those which may become a party to the agreement. If it is not, the fact that a representative has full powers does not entitle him to sign. As discussed in Chapter V above, the depositary must therefore first verify that, under the relevant provisions of the agreement, the State represented by the plenipotentiary submitting his full powers is in fact among those entitled to become parties.

109. The fact that a representative is qualified to participate in the deliberations of and to vote in an international organization because he is accredited to that organization or to vote in a conference because he has been granted credentials to do so only entitles the representative to adopt the text of the treaty prepared by that organization or conference and to sign the final act, if one is prepared, but does not entitle him to sign the treaty itself unless, in addition to being accredited or having credentials, he also has been granted full powers expressly authorizing him to do so or unless he is in possession of corresponding general full powers. The credentials to participate in the elaboration and adoption of a treaty and full powers to sign it may of course be contained in a single document, as long as there is no question that the representative has been authorized to sign the treaty.

110. The depositary must then verify that the person who signed the full powers was one of the three qualified authorities to do so. In that respect, the procedures outlined in chapter VII concerning instruments of ratification, acceptance, approval or accession apply, mutatis mutandis.

111. The depositary must also make sure, in the interest of the State concerned, as well as in that of the other contracting States, that the signatory does not exceed his powers. This verification is especially important since, while in most cases the signature is subject to subsequent ratification, the signature may, if the treaty so provides, bind the State concerned. It is therefore necessary in every case for the Secretary-General to verify the nature and scope of the powers issued to the representative before the latter signs the treaty and, inter alia, to ascertain whether the signature is or is not subject to ratification.

112. As concerns signatures ad referendum, the Secretary-General has accepted such signatures even when that procedure was not expressly provided for by the treaty. An example of a treaty which expressly provides for signature ad referendum is the statute of the International Centre for Genetic Engineering and Biotechnology. 70/ In most cases, these signatures ad referendum are not expressly confirmed stricto sensu, as provided for by article 12 (2) (b) of the Vienna Convention on the Law of Treaties, 3/ but rather implicitly by the subsequent deposit of an instrument of ratification. Indeed, it would appear that the use of the term "ad referendum" is for a number of States a reference to the need to "refer" the treaty for approval to their legislative bodies prior to its ratification. 71/ As indicated above, the Secretary-General accepts such signatures ad referendum even when no provisions exist in the treaty in that respect and treats them simply as signatures subject to ratification.

113. If the treaty provides expressly that signature must be followed by ratification or acceptance, it is not necessary for the full powers or the plenipotentiary to specify that the signature is effected subject to ratification.

114. The signature of the plenipotentiary is to be affixed opposite the name of the State in the space reserved for the purpose on the original (for the particulars of the signature pages, see para. 43). It is desirable that the signature be dated whenever the signing does not take place on the day on which the agreement is first opened for signature, although when because of an oversight such a date is not indicated, the signature is perfectly valid, and the date of signature is then duly indicated by the depositary in all relevant notifications and publications.

115. The initialling of a treaty is one of the means by which its text can be authenticated (for the authentication of the text of multilateral treaties deposited with the Secretary-General, see para. 38). Unless the treaty provides otherwise, the procedure for the expression of consent to be bound by a treaty - as distinct from the authentication of its text - involves the full signature of the treaty, and possibly its subsequent ratification, and cannot be replaced by or equated with the mere initialling of the treaty.

E. Opening for signature

116. Some treaties do not provide for their signature, but rather for the deposit of instruments of acceptance. Such is the case for the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies and also for a number of amending Protocols. When treaties provide for their signature, they then specify the place and the period of time where signatures are to be affixed; and the Secretary-General complies with these provisions and advises the parties concerned accordingly (see annex XIV). Very frequently, treaties are opened for signature at the Headquarters of the United

Nations. Thus, for example, the International Convention against the Taking of Hostages of 17 December 1979 72/ was opened for signature at Headquarters. But treaties may also be open for signature elsewhere, most often at the place of the meeting of the Conference which adopted the treaty. Thus, the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) of 14 November 1975 73/ was opened for signature at Geneva. The treaties may also specify the period of time they will be open for signature. Some treaties, for example most treaties on human rights, remain open for signature indefinitely; others provide for a set period. Thus, for example, article 65 of the International Cocoa Agreement, 1975, 66/ provides as follows:

"Article 65

"Signature

"This Agreement shall be open for signature at United Nations Headquarters from 10 November 1975 until and including 31 August 1976 by parties to the International Cocoa Agreement, 1972 and Governments invited to the United Nations Cocoa Conference, 1975."

In such cases, the Secretary-General does not accept signatures after the closing date, but indicates to the State concerned the other means of participation, such as accession, when applicable.

117. In the example above, the treaty is open only at a single location, at United Nations Headquarters in New York. However, other treaties have provided for signatures to be affixed in two locations, usually in a successive fashion. Thus, article 81 of the Vienna Convention on the Law of Treaties 3/ provides as follows:

"Article 81

"Signature

"The present Convention shall be open for signature by ... as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York."

In such cases, the original is temporarily entrusted to the entity which is to receive the signatures initially and is subsequently transferred to United Nations Headquarters. As indicated in paragraph 19, such responsibility is of an ancillary nature, and the entity which is to receive signatures during the initial period conforms, in that respect, to the practice of the Secretary General, as depositary. On a practical basis, that entity immediately informs the Secretary-General of any signature affixed and transmits to him the text of any related reservations or declarations. The Secretary-General, as depositary, upon the receipt of this information, and after having proceeded with the required verification, circulates the relevant notifications, as he would if the formality had been accomplished at Headquarters.

118. A special case is that of the 1982 Convention on the Law of the Sea, 20/ which was exceptionally opened simultaneously at Montego Bay and at New York under the provisions of paragraph 2 of its article 305, which reads as follows:

"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."

Under this provision, the Secretary-General prepared a duplicate set of signature pages, which was entrusted to the Jamaican Ministry. During the period of simultaneous opening, a number of signatures were affixed in Kingston, and upon the closing of the signature there, the duplicate set of signature pages was returned to the Secretary-General.

119. During the period when, under the provisions of a treaty, its signature is open at Headquarters, the original is not to be removed therefrom. An exception has been made to that principle under very special circumstances, and for a very few days, in order to facilitate the signature of a treaty, when it was anticipated that signatures would be affixed during the convening of a conference on matters related to the treaty, which was held away from Headquarters. Nevertheless, the Secretary-General has clearly indicated that such exceptions should be discouraged, inter alia, so as not to run the risk of losing the original.

Chapter VII

DEPOSIT OF BINDING INSTRUMENTS

120. The common feature of these instruments, whether they be instruments of ratification, acceptance, approval or accession or notifications of provisional application, territorial application, application to additional entities, etc., is that their deposit with the Secretary-General binds the State concerned. That State is then included among the parties, or its treaty action duly recorded. The Secretary-General thus must make sure, first, that the treaty is open to participation by the State concerned (see chap. V) and then that the instrument submitted is correct as to form and contents (for an unusual case of "implicit" acceptance to be bound, see para. 240). It is to be noted that the following presupposes the issuance of full powers (see chap. VI).

A. Issuing authorities

1. General principles

121. Recognized international practice is for such instruments to be issued and signed, as is the case for full powers, either by the head of State or Government or by the Minister for Foreign Affairs.

122. The actual title of these qualified authorities may, of course, differ according to the States' Constitution or legislation: President of the State, King or Queen, Grand Duke, Prince, Chairman of the Provisional National Defence Council, Prime Minister, Secretary of the People's Bureau for Foreign Affairs, Minister for External Relations, etc. As long as there is no ambiguity as to the signatory being one of these qualified authorities, an instrument signed by one of them will be deemed valid. An instrument may, of course, also be signed by another official, such as the permanent representative to the United Nations, but on the condition that he produces valid full powers to that effect duly signed by one of the qualified authorities.

123. However, an instrument signed for example by the "Vice-Minister for Foreign Affairs" is not acceptable unless it clearly appears that he is in charge of the Ministry ad interim or otherwise. By the same token, instruments signed by a minister other than the Minister for Foreign Affairs, for example an instrument signed by the Minister for Foreign Trade, will not be accepted, even if the subject-matters of the treaty would internally fall within the competence of that Minister. The Secretary-General would, however, accept such an instrument if it was accompanied by a declaration by one of the three qualified authorities witnessing that under the legislation of his State the Minister in question is authorized to bind the State in respect of the treaty concerned (see annex XV).

2. State representing another State

124. A special situation exists when States are linked by a treaty that provides that one of them shall represent the other (or others) in certain fields of international treaty relations. Examples of this situation can be found within the framework of the Convention of 25 July 1921 for the establishment of the Belgo-Luxembourg Economic Union 74/ and the Customs Union Treaty between Switzerland and Liechtenstein of 29 March 1923 75/ and subsequent arrangements thereto. The question that then arises is to what extent the Secretary-General,

as depositary, is to accept instruments emanating from the Government of a State that declares that it represents one or more other States by virtue of a Union treaty or similar agreement between the latter and the State or States in question. 76/

125. The Secretary-General cannot simply ignore the Union treaty. On the other hand, it is not for the Secretary-General to make a judgement on whether the subject-matter of the treaty concerned falls within the purview of the Union treaty, or for that matter whether the Union treaty is in force. Possibly because of these contradictory elements and of the very few instances when an instrument has been deposited on behalf of more than one State, the practice of the depositary on this question has not always been consistent. For example, the Secretary-General accepted as valid the deposit on behalf of both Liechtenstein and Switzerland of an instrument of accession from Switzerland to the Protocol of 11 December 1946 amending various agreements on narcotic drugs. However, the Government of the Netherlands and the Secretary-General of the League of Nations, the depositaries of the original agreements, had themselves accepted instruments issued by the Swiss Government stating that, under the terms of the Customs Union Treaty and arrangements concluded between Liechtenstein and Switzerland, Liechtenstein would participate, so long as the said Treaty remained in force, in the international conventions that had been or might thereafter be concluded in the matter of narcotic drugs, it being neither necessary nor advisable for that country to accede to them separately. However, while Liechtenstein appears on the League of Nations list of States applying the agreements in question, no date of accession is given after its name; the declaration by Switzerland was simply reproduced in a footnote. 77/ But this latter accession to the Protocol of 11 December 1946 represented a new development, in that what was involved was not merely Liechtenstein's "secondary" participation in an agreement applied by Switzerland, but rather formal accession by both countries, and the Secretary-General accepted the deposit of this single instrument for both countries without further formalities, such as confirmation by Liechtenstein. The same solution was applied in the case of the 1968 Coffee Agreement. The instrument of accession issued by the Belgian Government on its own behalf and on behalf of the Luxembourg Government under reference to the relevant provisions of the Belgo-Luxembourg Economic Union Convention was accepted without Luxembourg's being required to furnish separate powers. Nor were such powers required of Luxembourg when the Belgian Government, in 1973, accepted on its own behalf and on behalf of the Luxembourg Government, the extension of the same 1968 Coffee Agreement, in view of the procedure followed for the accession of the two countries to the 1968 Agreement itself.

126. Similarly, the Protocol for the continuation in force of the International Coffee Agreement, 1968, as extended, was signed by Belgium on behalf of Luxembourg on the strength of full powers issued by the Belgian Government on behalf of Belgium and the Grand Duchy of Luxembourg pursuant to article 31 of the Consolidated Convention instituting the Belgo-Luxembourg Economic Union.

127. However, the Secretary-General has come to the conclusion that, although there is little likelihood that a State would attempt to act on behalf of another without the valid legal support of a treaty or an act of similar nature, it still seems dangerous to treat as binding on a Government an act for which it has not itself explicitly accepted responsibility. Accordingly, the Secretary-General's practice is now in principle to request confirmation from the other State (or States), that it recognizes as valid the action taken on its behalf by the "representing" State. However, for Belgium-Luxembourg and for Switzerland-Liechtenstein, and in order to avoid burdensome and unnecessary formalities, the

Secretary-General has accepted a general statement from Luxembourg and Liechtenstein confirming to the Secretary-General the existence and validity of the treaties respectively with Belgium and Switzerland, and requesting that, until further notice, all acts by the "representing" State on their behalf in respect of treaties in domains such as commodities and customs be considered valid and binding on them. In case of doubt, the Secretary-General would, of course, request a specific confirmation.

B. Form and contents of the instruments

128. There are no established forms for instruments. They may be formal instruments, such as "instrument" of ratification or of accession (see annex XVI), but the Secretary-General, as depositary, will also accept less formal documents such as letters, notifications, etc., on the condition that the requirements for their validity are met. In order to be considered valid and to be accepted by the Secretary-General, the instrument must be duly signed as indicated above. Unsigned instruments in the form of notes verbales, even bearing the seal of the Ministry or of the Presidency, are not acceptable. Some flexibility however has been shown in exceptional circumstances, especially when time-limits for participation or signature were about to expire. In such cases, the Secretary-General has exceptionally accepted letters from the permanent representative to the United Nations, accompanied by the original of a cable from one of the three qualified authorities unambiguously and expressly instructing the permanent representative to bind the State and confirming that the relevant instrument had been duly signed and was being forwarded. Such exceptional acceptance by the Secretary-General of a "non-authentic" instrument is effected only on the absolute understanding that the instrument proper is to be handed to the Secretary-General within a very few days and that, failing that, the deposit would be annulled. With the increasing use of facsimile machines, this practice has been extended to, and practically replaced by, the acceptance of facsimile copies of the original instrument, but always on the basis of exceptional urgency and of the due and prompt receipt of the original. The instrument must also indicate the title of the signatory and the date and the place where the instrument was issued. The treaty concerned must also be reproduced either in full or - and this is the most frequent situation - be clearly identified (title, place and date of conclusion, etc.).

129. When required, the instrument must specify the scope of its application. Thus, for example, section 43 in article XI of the Convention on the Privileges and Immunities of the Specialized Agencies 8/ provides as follows:

"Section 43

> "Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General."

When the Secretary-General receives an instrument that does not specify to which specialized agencies the State concerned will apply the Convention, the Secretary-General informs that State that the instrument will be kept in abeyance until the said agencies are duly designated. A similar situation

exists in respect of 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, and protocols, concluded at Geneva on 10 October 1980. 78/ Under the provisions of its article 4, paragraph 3, States must, at the time of deposit of their instrument, notify the depositary of their consent to be bound by at least two of the three protocols annexed to the Convention. In the same manner, the Secretary-General kept instruments in abeyance until at least two of the protocols, by which the State concerned would be bound, had been duly identified.

130. Lastly, the instrument must contain an unambiguous expression of the will of the Government, acting on behalf of the State, to recognize itself as being bound by the agreement and to undertake faithfully to observe and implement its provisions. Thus, an expression, even under the signature of a competent authority, such as: "The Government has taken the necessary steps for the purpose of acceding to the agreement" or "the Government intends to accede" is not deemed to be a sufficient manifestation of the will of the Government concerned to become a party to the agreement.

131. If one of these necessary elements is lacking, the Secretary-General does not accept the instrument in deposit. Instead, the Secretary-General contacts the Government concerned in order to obtain an instrument in proper form or alternatively to receive a communication rectifying the error or the omission; the communication must be signed by the authority that issued the instrument or another qualified authority. It is only upon the receipt of such an instrument or communication that the deposit is then effected and that the Secretary-General will inform the other parties concerned accordingly.

132. A rather exceptional procedure was included in an unusual provision of the International Agreement on Olive Oil, 1956, as amended by the Protocol of 3 April 1958, 79/ which provided, in article 36, paragraph 5, that for the purposes of entry into force, a simple undertaking by a Government to endeavour to obtain as speedily as possible, in accordance with its constitutional procedure, either ratification or accession would be considered as equivalent to ratification or accession; 80/ such undertaking was to emanate from one of the government authorities competent to sign an instrument of ratification or accession. In accordance with that provision, the Secretary-General, as depositary, duly received such undertakings, when signed by a qualified authority, and then notified all States concerned accordingly and took such undertakings into account in determining the entry into force of the Agreement.

133. The exact nature of the instrument, notwithstanding its given title, must also be verified by the depositary. Normally, an instrument of accession cannot be substituted for the required instrument of ratification when the agreement has already been signed by the plenipotentiary of the Government concerned, any more than an instrument of ratification can be validly deposited if only an instrument of accession is acceptable. In this connection, the Secretary-General is guided by the relevant provisions of the agreement involved and by the intent of the Government in this regard. The Secretary-General, in his capacity as depositary, has evidently no authority to verify the correctness of the internal procedure followed by a State. But when he receives an instrument with a qualification that appears inaccurate - for example, if he receives an instrument of accession by a signatory - the practice of the Secretary-General is then to call the attention of the State concerned to the difficulty, and to request confirmation from the Government that the instrument is to be re-qualified as an instrument of ratification. Taking into account the unquestionable will of the State concerned to be bound, as expressed by the

relevant instrument, such confirmation, considered as a mere question of form, may be given by the permanent representative to the United Nations. Conversely, the deposit of an instrument of ratification by a non-signatory would be re-qualified as "accession", on the condition that the Secretary-General has satisfied himself that the provisions of the treaty allow for instruments of accession and that the deposit is made within the time-limits provided for by the treaty.

C. Time-limits for deposit

134. In the case of an accession, but also for all deposits, the depositary must also make sure that any time-limits prescribed in the treaty are observed. Otherwise, the instrument cannot validly be received in deposit.

135. The question of the date on which States may accede to a convention has sometimes raised questions of interpretation. Article 11 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, dated 7 September 1956, 81/ provides as follows:

> "1. This Convention shall be open until 1 July 1957 for signature by any State Member of the United Nations or of a specialized agency. It shall be subject to ratification by the signatory States, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.
>
> "2. After 1 July 1957 this Convention shall be open for accession by any State Member of the United Nations or of a specialized agency, or by any other State to which an invitation to accede has been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations, who shall inform each signatory and acceding State."

The question arose whether the Secretary-General could accept in deposit an instrument of accession from a Member State before 1 July 1957.

136. A literal interpretation of article 11 would have led to a negative answer to this question. However, it appeared desirable and in conformity with the spirit of universality of the Convention to interpret the provision as meaning that the Convention was closed to signature on 1 July 1957 and open thereafter for accession only, rather than to conclude that an instrument of accession could not validly be received in deposit before that date, all the more since, in this exceptional case, the travaux préparatoires indicated that such a liberal interpretation was justified. The Secretary-General accordingly accepted in deposit on 12 June 1957 an instrument of accession to the Convention issued by the Government of Cambodia.

137. However, if the agreement provides that States in general, or certain categories of States, cannot accede until the agreement has come into force, and if instruments of accession are transmitted to the Secretary-General prior to entry into force, the Secretary-General draws the attention of the Government that transmitted the instrument to the relevant provisions of the agreement and informs it that the instrument is being held in the Secretariat but will not be accepted for deposit until the date on which the agreement enters into force. On that date, the other States concerned are formally notified of the deposit of the instrument, which is deemed to have been effected on the date of entry into

force. Until that date, the State in question is not included among the States parties to the agreement.

138. A similar practice is applied in the case of accession to the constitutive acts of certain organizations, when States may become members by accession only on such terms as the Governing Council or the Board of the organization shall have determined, and upon the subsequent deposit of the corresponding instrument. If the Secretary-General receives the instrument before the Council had determined the conditions for accession, the Secretary-General will retain the instrument, and so advise the State and the organization concerned. The Secretary-General will formally receive the instrument in deposit only upon confirmation from the organization that it has determined the required conditions and after he has ascertained that the instrument duly reflects the acceptance of these conditions. 82/

D. Place, method, effective date and acknowledgement of deposit

1. Place and method

139. Instruments become effective only when they have been deposited with the Secretary-General at United Nations Headquarters. The Secretary-General has never made an exception to this principle, because Headquarters is the place where the originals are kept and the necessary functions performed. Any other practice would only lead to confusion and create difficulties regarding the date on which the instruments take effect. (For the practice as concerns signature see paras. 116-119.)

140. The deposit of instruments at United Nations Headquarters is effected either by personal delivery by a representative of the Government concerned to the Secretary-General or to his representative (the Legal Counsel or the Chief of the Treaty Section of the Office of Legal Affairs), or by mail.

141. Governments sometimes will choose, for reasons of convenience, to hand the instrument to a United Nations official at a unit outside New York (for example to the Director-General of the United Nations Office at Geneva), who then forwards the instrument to New York. While the Secretary-General has not discouraged this practice, it must be underlined that the remittance of the instrument to such officials produces no legal effect. This rule is based on the fact that the Secretary-General has assigned to the Office of Legal Affairs at Headquarters the performance of depositary duties (see para. 27), including the verifications which must be effected prior to the acceptance of the instrument for deposit. In addition, it is clear that the depositary must, at all times, know the exact status of the treaties deposited with him; such would not be the case if he were to proceed to "retroactive" deposits of instruments handed to other officials days and possibly weeks (owing to pouch delays) before their receipt in New York.

2. Date of deposit

142. The date of deposit is normally that on which the instrument is received at Headquarters either by the Secretary-General personally, or by the Legal Counsel or the Treaty Section of the Office of Legal Affairs, or by the Mail Unit, unless the instrument is deemed not acceptable. If the instrument is acceptable, its deposit is deemed effected on the day of its receipt at

Headquarters even if, on a practical basis, verifications, which may take a few days, have to be effected. However, the deposit will of course produce its effect only in accordance with the provisions of the treaty, for example that the party concerned will be bound three months after the date of the deposit (see chap. VIII below). If so provided for in the treaty, a party may also specify the date when its instrument is to produce its effects. For example, if a treaty provides that notice of withdrawal must be given a year in advance, a State may, when depositing its instrument, specify a date later than 12 months forth for the withdrawal to become effective.

3. Acknowledgement of deposit

143. In all cases, the Secretary-General acknowledges receipt of the instrument, indicating the date of its deposit, or informs the State concerned of any difficulties. The practice of issuing a formal procès-verbal of deposit has been discontinued, unless a representative insists on such a form of acknowledgement. In addition to acknowledging to the entity concerned the deposit of the instrument, after it has been received, the Secretary-General also publishes immediately an announcement in the Journal of the United Nations (see annex XVII). However, this announcement is made for information purposes only, and is accompanied by a footnote specifying that the date indicated in the announcement is "the date of receipt of the relevant documents", i.e., that the documents still have to be reviewed for determination as to the actual deposit. The Secretary-General also informs all parties concerned of the deposit by means of a depositary notification. If the deposit produces a legal effect, for example if the treaty is in force and will become applicable by the State concerned, the Secretary-General specifies the date of effect of the deposit (see annex XVIII).

E. Instrument in respect of only part of a treaty

144. A State may become a party to only part of an agreement, i.e., to only certain of its provisions, on the condition that such a possibility is provided for in the agreement. Thus, for example, the Revised General Act for the Pacific Settlement of International Disputes adopted on 28 April 1949 42/ provides, in its article 38, that accessions to the General Act may extend:

(a) To all the provisions of the Act (chaps. I, II, III and IV);

(b) To only those provisions only which relate to conciliation and any judicial settlement (chaps. I and II), together with the general provisions dealing with these procedures (chap. IV); or

(c) To only those provisions which relate to conciliation (chap. I), together with the general provisions concerning that procedure (chap. IV).

However, the contracting parties may benefit by the accessions of other parties only in so far as they have themselves assumed the same obligations.

145. 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 (and protocols), concluded at Geneva on 10 October 1980, 78/ presents a somewhat similar situation. As indicated in paragraph 129 above, paragraph 3 of article 4 of the said Convention provides that expressions of consent to be bound by any of the three protocols annexed to

the Convention shall be optional for each State, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of the Convention or of accession thereto, that State shall notify the depositary of its consent to be bound by at least two of the three protocols to the Convention. A number of commodity agreements also provide for the possible partial application of the agreement, but then only for the parties that would so decide (see para. 240).

146. In cases of partial application, the Secretary-General simply verifies that the instrument deposited complies with the provisions of the treaty in question. When such is not the case, the Secretary-General keeps the instrument in abeyance and brings the relevant provisions to the attention of the State concerned. Thus, when the Secretary-General received an instrument of 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 (and protocols) without the indication of which protocols the State concerned was also accepting, the Secretary-General deferred the deposit of the instrument until he had received this indication (see para. 129). The indication as to which parts of the treaty are being accepted must be made under the signature of one of the three qualified authorities in the same manner as the instrument itself.

F. Notifications

1. General principles

147. Notifications should be distinguished from declarations. In the absolute, declarations would normally appear to be statements which in principle purport to make more explicit the meaning of a provision of a treaty. Notifications, on the other hand, are normally statements that may be of two kinds: they may provide information as required under a treaty, or they may be in the nature of a binding instrument. However, the distinction between declarations and notifications is not always made and the terms are very frequently used in an interchangeable fashion.

2. Notifications providing information

148. Notifications may be made simply to provide information as required under a treaty. Thus for example, article 45 (4) of the Convention on Road Traffic of 8 November 1968 28/ provides that States parties must notify the Secretary-General of the distinguishing sign they have selected for display in international traffic. Similarly, article 2 of the Convention on the Recovery Abroad of Maintenance of 20 June 1956 83/ provides that each party shall communicate to the Secretary-General which judicial or administrative authority is to receive applications for the recovery of maintenance from a respondent, and that they shall inform the Secretary-General of any charges in respect thereof. The Secretary-General in turn duly communicates this information to the parties concerned.

3. Notifications in the nature of instruments

149. Notifications are most often in the nature of instruments, in that they will be binding on the State concerned and will create new obligations or

increase or limit existing ones. Such new or additional treaty obligations may be very diverse. The following are examples of such notifications:

(a) Declarations made under Article 36, paragraph 2, of the Statute of the International Court of Justice recognizing as compulsory the jurisdiction of the Court. These declarations create a binding obligation on the State to submit its differences with another State to the compulsory jurisdiction of the Court, subject only to the terms of the declaration; 84/

(b) Declarations recognizing the competence of treaty bodies, such as the Human Rights Committee, the Committee against Torture, etc. States having made such declarations accept that the relevant committee receives and considers claims from another State party that it is not fulfilling its treaty obligation 85/ or that the committee considers communications from individuals who claim to be victims of a violation by the State of the provisions of the Convention. Thus, for example, article 22 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 86/ reads as follows:

"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.";

(c) Notifications of provisional application (see paras. 238-240).

4. Subsequent notifications by States extending the scope of application

150. Certain agreements provide that their scope of application may be extended by means of notifications addressed to the Secretary-General. Thus, the Convention on the Privileges and Immunities of the Specialized Agencies, 8/ which provides, inter alia, in its section 43, that each State party shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of the Convention, further provides that "each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies."

151. Another similar situation is that provided for by the Convention relating to the Status of Refugees of 28 July 1951. 17/ The Convention provides that refugees are, inter alia, those persons who, for various reasons, cannot return to their country "as a result of events occurring before 1 January 1951". The Convention further provides, in paragraph B of its article 1, that:

"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."

152. Another situation of subsequent extension of application is that of treaties with federal clauses that allow for the subsequent application of a treaty to additional territorial units (see para. 272 below).

153. In such cases of extension of the application of a treaty, the practice of the Secretary-General was not in the past wholly consistent, in that he did not at all times insist that the notifications should emanate from one of the three qualified authorities. However, taking into account that such notifications entail additional commitments by the States concerned, the Secretary-General has subsequently taken the position that these notifications should definitely emanate from one of the three qualified authorities, or if made by the permanent representative or another official, that they be accompanied by full powers.

154. On a substantive basis, a notification of withdrawal of reservations (see chap. VIII) would also result in the similar effect of possibly increasing the scope of the application of a treaty by a State, as would also a notification of territorial application (see chap. XI).

5. Subsequent notifications by States limiting the scope of application

155. An important example of such a notification is that in article IV (3) of the International Covenant on Civil and Political Rights of 16 December 1966, 27/ which reads as follows:

"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."

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* Under paragraphs 1 and 2 of article IV, derogations to the full application of the Covenant are allowed in respect of certain articles, in case of public emergency.

In accordance with that provision, the Secretary-General duly communicates to the other States the notifications he receives. However, a difficulty has sometimes arisen as concerns the information in respect of the provisions from which the State had derogated. When the notification merely describes, in general terms, the measures the State has taken to mitigate or to remedy the public emergency, without specifying which specific provisions of the Covenant it has derogated from, i.e., without listing the articles of the Covenant whose

application is suspended as a result of these measures, the Secretary-General felt that he was not in a position to so inform the other States parties, as prescribed by article IV (3). His practice was therefore to insist that the State concerned indicate the articles from which it had derogated; and only when this information was provided would the Secretary-General consider the notification validly effected, and only then would he communicate the notification to the other States. This practice, while it had the advantage of informing the other States with due precision as to the exact provisions from which the State concerned had derogated, presented the defect of delaying the communication, sometimes for a considerable period of time, pending the receipt of the requested clarification. The Secretary-General has therefore modified his practice in this respect. If the specific articles from which the State concerned has derogated are not indicated, the Secretary-General will, as in the past, request that information from that State, but he will now circulate immediately the notification as he receives it, adding in the relevant depositary notification that he will provide information identifying the specific articles concerned upon receipt of that information from the State involved.

G. Secondary effects of the deposit of an instrument

156. The Secretary-General must sometimes also, in his capacity as depositary, determine the consequential effects of the deposit of an instrument with regard to certain other agreements. In some instances, for example, a protocol amending an earlier agreement may provide that, unless the State concerned notifies to the Secretary-General a contrary intent, the acceptance of the protocol entails also participation of the State in the agreement as amended or that, after the entry into force of the amending protocol, acceptance of the original agreement shall also entail, unless the State concerned notifies the Secretary-General to the contrary, the participation of that State in the amending protocol and therefore in the agreement as amended. Thus, for example, article 19 of the Protocol amending the Single Convention on Narcotic Drugs, 1961, concluded at Geneva on 25 March 1972, 36/ provides that any State which becomes a Party to the Single Convention after the entry into force of the Protocol shall, failing an expression of a different intention by that State, be considered a party to the Single Convention as amended, and be considered a party to the unamended Single Convention in relation to any party to that Convention not bound by the Protocol. Moreover, articles X and XI of the Protocol amending the Convention on the Limitation Period in the International Sale of Goods, concluded at Vienna on 11 April 1980, 37/ provide that if a State ratifies or accedes to the 1974 Limitation Convention after the entry into force of the Protocol, the ratification or accession shall also constitute an accession to the Protocol if the State notifies the depositary accordingly. Further, any State that becomes a contracting party to the 1974 Limitation Convention, as amended by the Protocol, shall, unless it notifies the depositary to the contrary, be considered to be also a contracting party to the Convention, unamended, in relation to any contracting party to the Convention not yet a contracting party to the Protocol. In all such cases, the Secretary-General notifies the parties concerned, not only of the deposit of the instrument itself, but also of the consequential participation in the protocol or in the amended or non-amended agreement, as the case may be (see annex XIX).

H. Withdrawal of an instrument

157. A State that had deposited an instrument of ratification or of a similar nature may subsequently decide to withdraw its instrument. The Vienna Conference on the Law of Treaties did not address this question. The practice of the Secretary-General has been to allow such a withdrawal until the entry into force of the treaty, on the understanding that, until that time, States are not definitely bound by the treaty.

158. In some cases, States that had thus withdrawn an instrument subsequently deposited a new instrument, but this time with reservations. In this manner, they were in compliance with the rule according to which reservations must be made at the time of deposit of the instrument (see para. 204). Thus, for example, the Government of Greece, which on 6 December 1950 had deposited an instrument of acceptance of the Convention on the Intergovernmental Maritime Organization of 6 March 1948, withdrew that instrument on 26 March 1952 (before the entry into force of the Convention, which took place on 17 March 1958), but reaccepted the Convention on 31 December 1958, with a reservation. And the Government of Spain, which on 29 July 1958 had deposited an instrument of accession to the Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, and Protocol of Signature, signed at Geneva on 18 May 1956, 87/ withdrew the said instrument on 2 October 1958 (before the entry into force of the Convention, which took place on 1 January 1959) and then deposited a new instrument with a reservation.

159. While the withdrawal of instruments is accepted until the entry into force of the corresponding treaty, that withdrawal is without consequence as to the entry into force of the treaty, if and once the conditions for entry into force have been met. Thus, if a treaty provides that it will enter into force 90 days after the deposit of 20 instruments, once that number has been reached, the withdrawal, for example, of one of these instruments which would lower the total number of 19 would not result in the treaty not entering into force, as between the 19 remaining parties, 90 days after the conditions were met. (For a case when a State ceases to exist, see para. 235 below.)

I. Denunciation of a treaty

160. The Secretary-General also receives for deposit notifications of denunciation of treaties. The practice in respect of the deposit of binding instruments applies mutatis mutandis. The Secretary-General verifies that the denunciation of the treaty is allowed and that the conditions therefor have been met. He informs the other parties and specifies the date of effect of the withdrawal from the treaty. A difficulty may occur, however, when the treaty is silent as to withdrawal from the treaty. Thus when the Government of Senegal transmitted to the Secretary-General, as depositary, a notification by which Senegal denounced the Convention on the Territorial Sea and the Contiguous Zone 88/ and the Convention on Fishing and Conservation of the Living Resources of the High Seas of 29 April 1958, 89/ both of which did not provide for denunciation, the Secretary-General, in the absence of pertinent clauses in the Conventions concerned and of specific instructions from the parties, did not consider himself authorized to receive the notification of denunciation in deposit. The notification as well as a related exchange of correspondence between the Secretary-General and the Government of Senegal was circulated by the Secretary-General to all States concerned. In connection with the notification by Senegal, the Secretary-General received a communication by the Government of the United Kingdom to the effect that in the view of the United

Kingdom those Conventions were not susceptible to unilateral denunciation by a State that was a party to them and the United Kingdom therefore could not accept the validity or effectiveness of the purported denunciation by the Government of Senegal; and that accordingly, the Government of the United Kingdom regarded the Government of Senegal as still bound by the obligations which they assumed when they became a party to those Conventions and that the Government of the United Kingdom fully reserved all their rights under them as well as their rights and the rights of their nationals in respect of any action which the Government of Senegal had taken or might take as a consequence of the said purported denunciation. That communication was also circulated to all parties concerned. In view of the difficulty, the Secretary-General, not having accepted in deposit the notification of denunciation, simply inserted an explanatory footnote in the publication Multilateral Treaties Deposited with the Secretary-General. 90/ On the same basis, the said notification of denunciation could not be registered ex officio under the procedure set forth in article 4, paragraph 1 (c), of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations. Instead, the registration of the certified statement was effected in the name of the Government of Senegal in accordance with article 2 (1) of the Regulations, as at the date of receipt of the notification of denunciation; as for the above-mentioned communication by the United Kingdom, it was similarly registered in the name of the United Kingdom. 91/

Chapter VIII

RESERVATIONS, OBJECTIONS, DECLARATIONS

A. Definition of the term "reservation"

161. Paragraph 1 (d) of article 2 of the Vienna Convention on the Law of Treaties, 3/ which restates established customary international treaty law on the matter, defines the term reservation as follows:

> "'Reservation' means 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."

Paragraph 1 (d) of article 2 of the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations 4/ is, mutatis mutandis, similarly worded. The reservation must be included in the instrument or annexed to it and must emanate from one of the three qualified authorities (see paras. 121 and 122 above).

B. Main issues raised by reservations

162. The initial question which confronts the depositary when reservations are made is whether he should accept a signature or an instrument accompanied by a reservation. In that connection, two situations may occur: (a) the treaty is silent as to possible reservations; or (b) the treaty contains provisions as to reservations. It is to be noted that the General Assembly, in paragraph 1 of its resolution 598 (VI) of 12 January 1952 (see annex XX) on reservations to multilateral conventions:

> "Recommends that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them".

However, a large number of treaties still do not include any such provisions.

163. If the treaty contains provisions as to reservations, the depositary, when deciding whether to accept a signature or an instrument accompanied by a reservation, will normally be guided by the provisions of the treaty concerned.

164. For example, the treaty may expressly forbid any reservations. Such is the case for the International Cocoa Agreement, 1980, 92/ article 67 of which reads as follows:

> "Article 67. RESERVATIONS
>
> "Reservations may not be made with respect to any of the provisions of this Agreement."

In that case, the depositary will simply refuse to accept a signature or the deposit of an instrument accompanied with a reservation. If the treaty

expressly forbids reservations to specific articles, or conversely authorizes reservations to only specific articles, the depositary should simply abide by the relevant provisions. (For the practice of the Secretary-General in respect of treaties containing provisions as to reservations, see paras. 189-196 below.)

165. But two difficulties remain. If the treaty is silent as to the acceptability of reservations, what should the practice of the depositary be when a State makes reservations? Secondly, if the treaty contains provisions which exclude reservations, is it for the depositary to determine whether a "statement" accompanying the instrument is a reservation, i.e., whether the statement "purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to the State concerned"; and if the depositary is to make that determination, on what basis should he do so (see paras. 194-196).

166. As to the first question, the fact that a multilateral treaty does not contain any provisions relating to reservations cannot, ipso facto, in the present state of international practice, justify the conclusion that States wishing to become parties to the treaty may not formulate reservations thereto. Nevertheless, the acceptance or rejection of the reservation is, so far as signatory and contracting States are concerned, a determining factor in the participation in the treaty of a State that would make its commitment conditional upon the application of the treaty in ways not provided for in the treaty itself.

167. The alternatives appear to be either a rigid system (the written consent of all parties to the treaty will be required before the deposit of an instrument accompanied by a reservation is accepted) which would eliminate any possible ambiguity, or a flexible system (the reservation will be presumed to have been accepted in the absence of any objection, the parties remaining free to draw from the reservation whatever legal consequences they deem right and proper in their treaty relation with the reserving State). In the first case, participation in the multilateral treaty will doubtlessly be more restricted, but this will be offset by respect for the "integrity of the treaty"; in the second case, wider participation in the treaty will be obtained, but will then entail to some extent a "bilateralization" of international relations.

C. Practice of the Secretary-General as depositary prior to 1952, as concerns treaties silent as to reservation

168. Originally, the Secretary-General applied a somewhat rigid system, which followed the practice of the Secretary-General of the League of Nations. When a particular treaty contained no provisions regarding the procedure to be followed as concerns the formulation and acceptance of reservations, the Secretary-General, in the exercise of his functions as depositary, adhered to the general principle that a reservation could not definitely be accepted until it had been established that none of the other States directly concerned had any objection thereto. An objection to a reservation may be defined as a unilateral statement, however phrased or named, made by a State which has consented to be bound by the treaty, whether or not the treaty is in force, to the effect that a reservation made by another State is contrary to the provisions of the treaty, inter alia, as being incompatible with the object and purpose of the treaty, and that the said reservation is therefore invalid and inadmissible. Thus, when a treaty was already in force, the Secretary-General did not accept for definitive deposit an instrument of ratification or accession until the consent, express or implied, of the States that had become parties to that treaty up to the date on

which the instrument containing the reservation was submitted. If the treaty had not yet entered into force, the instrument was not accepted for definitive deposit except with the consent of the States that had ratified the treaty or had acceded to it by the date of entry into force or by the date on which the time-limit for entry into force had begun. Consequently, in the case of an agreement not yet in force, when the Secretary-General received a signature or an instrument of ratification or accession accompanied by a reservation, he formally communicated the reservation to all States that might become parties to the Convention. At that time, he asked the States that had already ratified or acceded to the agreement to inform him of their attitude regarding the reservation and stated that unless they notified him of their objections to that reservation before a certain date - generally the date of entry into force of the agreement - they would be presumed to have accepted it. States which ratified or adhered to the agreement after having been informed of a reservation were deemed to have accepted that reservation.

169. If the convention had already entered into force on the date on which the instrument containing the reservation was received, the procedure was similar, except that the Secretary-General would set a reasonable time-limit for transmitting objections: he would either adopt the date on which the instrument of ratification or accession was to take effect, if the agreement in question made provision for such an interval, or fix a special time-limit.

170. Where there existed an organ capable of determining the effects of a reservation, the Secretary-General referred the text to it for interpretation. Thus, on 30 June 1948, the Secretary-General informed the States parties to the Constitution of the World Health Organization 93/ that he was unable to decide whether the United States of America had become a party to that Convention by depositing an instrument containing a reservation, but he also pointed out that the World Health Assembly was competent to interpret the Constitution, under article 75 of that text. The Assembly later recognized unanimously that the reservation was not incompatible with the Constitution, and it was only then that the Secretary-General announced that the United States had become a party to the Convention.

171. A similar procedure was followed when, on 16 February 1949, the Union of South Africa expressed the desire to sign the Protocol Modifying Certain Provisions of the General Agreement on Tariffs and Trade, 94/ with a reservation excluding the application of one of its articles. In that case, the signature was definitely binding on the signatory States. A procès-verbal of signature was therefore drawn up in order to enable the representative of the Union of South Africa to sign the Protocol, "it being understood that such signature would not have any legal effect until the Secretary-General of the United Nations had informed each of the Contracting Parties of it and of the reservation made thereto and until each Contracting Party had notified the Secretary-General of its acceptance".

172. A declaration accepting the reservation was subsequently transmitted to the Secretary-General, informing him that the reservation formulated by the Union of South Africa had been examined at a meeting held on 9 May 1949, at which all the contracting parties to the General Agreement on Tariffs and Trade had been represented, and that no contracting party had raised any objection to the reservation. A more flexible system was subsequently instituted when the General Assembly adopted resolution 598 (VI) of 12 January 1952, and later resolution 1452 B (XIV) of 7 December 1959.

D. Depositary practice recommended by the General Assembly in resolutions 598 (VI) and 1452 B (XIV) in respect of treaties silent as to reservations

1. Background

173. Under the practice described in section C above, a difficulty occurred in 1950, in that it was not possible for the Secretary-General to determine whether the Convention on the Prevention and Punishment of the Crime of Genocide, which contained no provisions as to reservations, would enter into force in accordance with its article XIII, i.e. the nineteenth day after the date of deposit of the twentieth instrument of ratification or accession, since a number of those 20 instruments contained reservations as to various articles of the Convention, to the substance of which reservations a number of other States had objected. It had consequently appeared to the Secretary-General that the legal effect of objections to reservations would require a determination in order to establish whether States making reservations to which objection had been raised were to be counted among those necessary to permit the entry into force of the Convention. The Secretary-General therefore reported the difficulty to the General Assembly at its fifth regular session. 95/

174. In turn, and on the basis of a report of its Sixth Committee, the General Assembly, on 16 November 1950, adopted resolution 478 (V) (see annex XXI), in which it requested the International Court of Justice to give an advisory opinion on the various questions raised by the situation. The Assembly also invited the International Law Commission to prepare a report on the matter. 96/

175. On 28 May 1951, the International Court of Justice gave its advisory opinion on the questions (see annex XXII) within the context of the Convention on the Prevention and Punishment of the Crime of Genocide, 44/ and the International Law Commission, in its report covering the work of its third session (16 May-27 July 1951), submitted to the General Assembly its observations on the general problem of reservations. 97/

176. Having noted the advisory opinion of the International Court of Justice of 28 May 1951 regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and the report of the International Law Commission on the question of reservations to multilateral conventions, the General Assembly, in its resolution 598 (VI), advised the Secretary-General, as depositary of multilateral treaties, to follow this practice: (a) to accept the deposit of documents containing reservations or objections; (b) to refrain from passing upon the legal effect of such documents; and (c) to communicate the text of such reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications. This practice was to be followed in respect of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and to conventions concluded after the date (12 January 1952) of adoption of resolution 598 (VI).

2. Practice of the Secretary-General after the adoption of resolution 598 (VI)

(a) In general

177. So far as conventions concluded before 12 January 1952 were concerned, the Secretary-General, as depositary, continued to follow his previous practice as described above; but only until 7 December 1959, however, since on that date the

General Assembly by its resolution 1452 B (XIV) requested the Secretary-General to apply the practice described in section C above to all conventions concluded under the auspices of the United Nations (i.e., even to those concluded before 12 January 1952) which did not contain provisions to the contrary.

178. As concerns the treaties concluded after General Assembly resolution 598 (VI) of 12 January 1952, and in the absence of any clause on reservations in such treaties, the Secretary-General adheres to the provisions of that resolution and restricts himself to communicating to the States concerned the text of the reservations accompanying instruments of ratification or accession and eventually the texts of objections to the reservations, without passing upon the legal effect of such acts. It is then for the States concerned to make known their position as to reservations. Thus, for example, a number of objections were made by States in respect of a reservation made by Chile in connection with the Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment. 86/ The reservation (to art. 2, para. 3, of the Convention) provided in substance that the Government of Chile reserved the right not to apply the provisions of the Convention to subordinate personnel governed by the Code of Military Justice if the order patently intended to lead to perpetration of the acts referred to in article 1 (as constituting "torture") was reiterated by the superior officer after being challenged by his subordinate. Various States subsequently formulated objections to that reservation and the Government of Chile subsequently withdrew it. 98/

179. A similar situation occurred in respect of a reservation to the same Convention made by the German Democratic Republic, which declared, in substance, that it would not contribute to those expenses of the Committee against Torture which arose from activities of the Committee which it had not accepted. A number of objections were deposited and the German Democratic Republic subsequently withdrew its reservation. 98/

180. Another case of reservations followed by a number of objections may be found in respect of the Convention on the Elimination of All Forms of Discrimination against Women. 25/ Various States deposited instruments accompanied by statements to the effect that their participation would be without prejudice to, or could not conflict with the provisions of the Islamic Shariah. A number of States objected to the reservations. 99/

181. In all of the above cases, the Secretary-General duly circulated the reservations and the objections thereto, and in the relevant instances the withdrawal of the reservations, without passing judgement on them since as far as he is concerned, the Secretary-General, when receiving instruments of ratification or acceptance with appended reservations, considers that his main function is to inform the States concerned of the deposit, quoting the reservation but without seeking to clarify the scope or effects of the reservation. This practice of course applies only when the treaty is silent as to reservations. Similarly, as indicated above, the Secretary-General circulates without comment any objections to those reservations that might subsequently be received. Once the Secretary-General has accepted an instrument of ratification or accession, he includes the State concerned in all the processes of operation of the convention, so far as they concern the Secretary-General's functions in respect of that convention. That would involve, for instance, the circulation to that country of all documents appertaining to the status of the convention. If in carrying out those functions the Secretary-General should be confronted with some unexpected legal problem which could not be solved by agreement between the parties, the only possibility open to him

would be to seek the guidance of the General Assembly, which could then possibly request an advisory opinion from the International Court of Justice.

(b) In case of objections to participation by another State and of objections to territorial applications

182. A number of States have made declarations to the effect that their ratification of various treaties would in no way constitute recognition of another State or be a cause for the establishment of any relations under the treaty. In turn, such State has made declarations such as:

> "The Government of the State of ... has noted the political character of the statement made by the Government of [the other State]. In the view of the Government of the State of ..., this Convention is not the proper place for making such political pronouncements. Moreover, the said declaration cannot in any way affect whatever obligations are binding upon [the other State] under general international law or under particular conventions. The Government of the State of ... will, in so far as concerns the substance of the matter, adopt towards the Government of [the other State] an attitude of complete reciprocity."

183. Various States have deposited declarations objecting to the extension of the application of a treaty to Non-Self-Governing Territories by another State. Thus, for example, the Government of Argentina has objected to the territorial application of treaties by the United Kingdom to the Falkland Islands (Malvinas) in the following terms:

> "[The Government of Argentina] makes a formal objection to the declaration of territorial extension issued by the United Kingdom with regard to the Malvinas Islands (and dependencies), which that country is illegally occupying and refers to as the 'Falkland Islands'. The Argentine Republic rejects and considers null and void the [said declaration] of territorial extension."

In turn, the Secretary-General received from the Government of the United Kingdom of Great Britain and Northern Ireland the following declaration:

> "The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to their right, by notification to the Depositary under the relevant provisions of the above-mentioned Convention, to extend the application of the Convention in question to the Falkland Islands or to the Falkland Islands and dependencies, as the case may be. For this reason alone, the Government of the United Kingdom are unable to regard the Argentine [communication] under reference as having any legal effect."

In all such cases, the Secretary-General has limited himself to the circulation and publication of the communications in question.

(c) Practice as concerns the determination of the entry into force of a treaty

184. Since he is not to pass judgement, the Secretary-General is not therefore in a position to ascertain the effects, if any, of the instrument containing reservations thereto, inter alia, whether the treaty enters into force as between the reserving State and any other State, a fortiori between a reserving State and an objecting State if there have been objections. As a consequence, if the final clauses of the treaty in question stipulate that the treaty shall enter into force after the deposit of a certain number of instruments of

ratification, approval, acceptance or accession, the Secretary-General as depositary will, subject to the considerations in the following paragraph, include in the number of instruments required for entry into force all those that have been accepted for deposit, whether or not they are accompanied by reservations and whether or not those reservations have met with objections.

185. Nevertheless, an objection possibly could in principle have the legal effect of precluding the deposit of an instrument containing a reservation which would conceivably be totally invalid - for example, where one or more contracting parties object to the instrument on the ground that the reservation is absolutely incompatible with the object or purpose of the treaty and hence would result in precluding the entry into force; but it would not be for the Secretary-General to pass upon the matter. Initially, on the basis of the above, his practice was as follows: 100/ once the number of instruments required for the initial entry into force of the treaty had been received, if some of those instruments were accompanied by reservations which had met with objections or if it was the deposit of an instrument accompanied by a reservation that brought the number received up to the number required for initial entry into force, he announced the entry into force of the treaty unless one or more of the contracting parties should "object", within 90 days, to the inclusion of the instruments in question in the number required for initial entry into force of the treaty, the contracting parties remaining of course free at any time to raise objections as regards their reciprocal treaty relations.

186. However, the effect of this practice was to delay the announcement of the entry into force of the treaty as well as its registration under Article 102 of the Charter of the United Nations. For example, the Convention on the High Seas, 101/ which entered into force on 30 September 1962, was only registered on 1 January 1963. Furthermore, it was felt that delaying the announcement implied as much of a judgement by the Secretary-General as not doing so did. Also, no objection had ever in fact been received from any State concerning an entry into force that included States making reservations. Finally, for a State's instrument not to be counted, it might conceivably be required that all other contracting States, without exception, would have not only objected to the participation of the reserving State, but that those objecting States would all have definitely expressed their intention that their objection would preclude the entry into force of the treaty as between them and the objecting State. 102/ Accordingly this practice has been discontinued in all cases, and the Secretary-General applies the practice described in paragraph 184 above.

187. As concerns the deposit of instruments after entry into force, the practice of the Secretary-General was initially not to indicate any date of entry into force in the circular letter announcing the deposit of an instrument accompanied by a reservation, as indicating such a date would amount to passing on the legal effect of the instrument concerned. Upon a subsequent review of this practice, however, it was felt that not indicating the date of effect might also be considered as amounting to passing judgement. Accordingly, the practice was changed so that now where ratifications, accessions and the like are accompanied by reservations not provided for in the treaty in question, the Secretary-General indicates the date on which, in accordance with the treaty provisions, the instrument would normally produce its effect, leaving it to each party to draw the legal consequences of the reservations that it deems fit.

3. Practice after the adoption of resolution 1452 B (XIV)

188. By resolution 1452 B (XIV) the General Assembly, recalling its resolution 598 (VI) of 12 January 1952, decided to amend paragraph 3 (b) of that resolution by requesting the Secretary-General to apply the paragraph to his depositary practice until such time as the General Assembly might give further instructions, in respect of all conventions concluded under the auspices of the United Nations which did not contain provisions to the contrary. It decided that the practice described in paragraphs 173 to 187 above would henceforth apply, not only to treaties concluded after 12 January 1952, but to all conventions, i.e., even to those concluded before 12 January 1952. The Assembly also confirmed the understanding of the Secretary-General on the matter, that is, that the practice would only apply to treaties which did not contain provisions to the contrary.

B. Practice of the Secretary-General, as depositary, in respect of treaties that contain provisions as to reservations

1. General principles

189. In respect of statements which are clearly reservations, the depositary of a treaty must observe such provisions relating to reservations as are contained in the agreement concerned. For example, article 21 (2) of the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) of 1 July 1970 103/ provides as follows:

> "2. If at the time of depositing its instrument of ratification or accession a State enters a [non-authorized] reservation ..., the Secretary-General of the United Nations shall communicate the reservation to the States which have previously deposited their instruments of ratification or accession and have not since denounced this Agreement. The reservation shall be deemed to be accepted if none of the said States has, within six months after such communication, expressed its opposition to acceptance of the reservation. Otherwise, the reservation shall not be admitted, and, if the State which entered the reservation does not withdraw it the deposit of that State's instrument of ratification or accession shall be without effect. For the purpose of the application of this paragraph the opposition of States whose accession or ratification is, in virtue of this paragraph, without effect by reason of reservations entered by them, shall be disregarded."

Upon the deposit by various States of a non-authorized reservation concerning transport operations between States members of the European Economic Community, the Secretary-General duly circulated the reservation. In the absence of any objection thereto within six months, the Secretary-General accepted the deposit of the relevant instruments, with effect from the date of the expiry of the six-month period. 104/

190. Another example is that of the Convention on Psychotropic Substances of 21 February 1971, 105/ which provides as follows in its article 32 (3):

> "A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraphs 2 and 4 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been

objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood, however, that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation".

When the Secretary-General received instruments of ratification containing reservations other than those expressly authorized, he therefore circulated the text of the said reservations, and he only accepted the instrument for deposit after one year had elapsed without having received qualifying objections as defined above. 106/

191. If the treaty forbids any reservation, the Secretary-General will refuse to accept the deposit of the instrument. The Secretary-General will call the attention of the State concerned to the difficulty and shall not issue any notification concerning the instrument to any other State concerned (see paras. 194-196 below).

192. If the prohibition is to only specific articles, or conversely reservations are authorized only in respect of specific provisions, the Secretary-General shall act, mutatis mutandis, in a similar fashion if the reservations are not in keeping with the relevant provisions of the treaty. Such a situation occurred when a State deposited instruments of accession to both the Convention relating to the Status of Refugees of 28 July 1951 17/ and to the Protocol relating to the Status of Refugees of 31 January 1971 107/ with reservations to the effect that it did not accept the provisions contained in both treaties in respect of the settlement of disputes by the International Court of Justice. Such a reservation was authorized under article IV of the Protocol but was barred under article 42 (1) of the Convention, which reads as follows:

"Reservations

"1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than articles 1, 3, 4, 16 (1), 33, 36-46 inclusive." [the settlement of disputes being regulated by article 38]

The Secretary-General accordingly accepted the instrument in respect of the Protocol and recalled to the State concerned the prohibition in the Convention.

193. However, only if there is prima facie no doubt that the statement accompanying the instrument is an unauthorized reservation does the Secretary-General refuse the deposit. Such would evidently be the case if the statement, for example, read "State XXX shall not apply article YYY", when the treaty prohibited all reservations or reservations to article YYY.

2. Determination of whether the statement accompanying the instrument is a reservation

194. However, such a prima facie determination is not always possible and in the above case the Secretary-General might have to endeavour to determine, at least tentatively, the character of the statement and whether or not the statement was in the nature of an unauthorized reservation, whatever its description or title (Declaration, Understanding, etc.). If in the opinion of the Secretary-General

the statement unambiguously purports to exclude or modify the legal effects of certain provisions of the treaty in their application to the State concerned, contrary to prohibitions in the treaty, the Secretary-General shall apply the practice described in section E.1 above.

195. In case of doubt, the Secretary-General shall request clarification from the State concerned. Thus in one instance the Secretary-General questioned the character of the statement accompanying the instrument of ratification and stated, inter alia, in a letter to the Government concerned that it would be his understanding that the statement, which had been termed an "observation", was merely intended to note the fact of the relation between articles of the convention and that it should therefore in no way be construed as a reservation. He added:

> "I am raising this matter bearing in mind the provisions of resolutions 598 (VI) and 1452 B (XIV) on reservations to multilateral conventions, adopted by the General Assembly on 12 January 1952 and 7 December 1959, respectively. In particular, I wish to refer to paragraph 3 (b) of resolution 598 (VI) as amended by resolution 1452 B (XIV), under which the Secretary-General is not permitted to receive for deposit an instrument of ratification subject to a reservation made contrary to the provisions of the convention. In view of the above, I would appreciate it if, before proceeding to notify the interested States of the deposit of the instrument of ratification in question, I could have your confirmation of my understanding, ..., regarding the nature of the statement contained in the same instrument".

The ratification was formally received in deposit on the date of receipt of the reply confirming the understanding of the Secretary-General, and all interested Governments were notified accordingly.

196. However, the Secretary-General feels that it is not incumbent upon him to request systematically such clarifications; rather, it is for the States concerned to raise, if they so wish, objections to statements which they would consider to constitute unauthorized reservations. Thus, for example, when it ratified the United Nations Convention on the Law of the Sea 19/ - articles 309 and 310 of which provide that no reservations may be made to the Convention, and that declarations or statements, however phrased or named, may only be made if such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of the Convention in their application to the State concerned - the Government of the Philippines made the following "statement":

> "The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence, and security;
>
> "The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation". 108/

The Secretary-General circulated that statement, in respect of which a number of States deposited objections to the effect that the declarations contained therein constituted, in essence, reservations which were contrary to the prohibition in article 309. 109/ In response to those objections, the text of

which he had duly circulated, the Secretary-General received from the Government of the Philippines the following declaration which he also circulated without comment:

> "The Philippines declaration was made in conformity with article 310 of the United Nations Convention on the Law of the Sea. The declaration consists of interpretative statements concerning certain provisions of the Convention.
>
> "The Philippines Government intends to harmonize its domestic legislation with the provisions of the Convention.
>
> "The necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippines sovereign rights over archipelagic waters, in accordance with the Convention.
>
> "The Philippines Government, therefore, wishes to assure the [States Parties] to the Convention that the Philippines will abide by the provisions of the said Convention." 110/

F. Special practice in respect of reservations to constitutive acts of international organizations

1. International organizations in general

197. When a convention embodies a constitution establishing an international organization, the Secretary-General's practice is similar to his practice prior to resolution 598 (VI) (see sect. C above) and he transmits any reservations accompanying an instrument of ratification or accession to that organization for its consideration and informs the State concerned accordingly. He then makes certain that his actions conform, in respect of such instrument, with the decision of the competent organ of the organization concerned. In this connection it will be noted that the International Law Commission, in its commentary on the provisional draft articles covering the topic of the conclusion of treaties as adopted at its fourteenth session, considered that:

> "[I]n the case of instruments which form the constitutions of international organizations, the integrity of the instrument is a consideration which outweighs other considerations and ... it must be for the members of the organization, acting through its competent organ, to determine how far any relaxation of the integrity of the instrument is acceptable." 111/

198. The Vienna Convention on the Law of Treaties 2/ has codified that practice in its article 20, paragraph 3, which reads:

> "When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization."

Thus, when Germany and the United Kingdom accepted the Agreement establishing the African Development Bank of 17 May 1979, as amended, 112/ they made reservations which had not been contemplated in the Agreement. The Secretary-General, as depositary, duly communicated the reservations to the Bank and accepted the deposit of the instruments only after the Bank had informed him that it had accepted the reservations. 113/

2. The specialized agencies of the United Nations

199. The Convention on the Privileges and Immunities of the Specialized Agencies 8/ also requires additional procedural steps on the part of the depositary since, although only States are stricto sensu parties to the Convention, under its terms the specialized agencies themselves must participate in the operation of the Convention and take various actions under its final articles. In fact, an examination of the form and structure of the Convention on the Privileges and Immunities of the Specialized Agencies leaves little doubt that the specialized agencies themselves have the necessary juridical standing to object to reservations and that their consent is accordingly necessary before a reservation altering their own privileges and immunities under the Convention could become effective.

200. Indeed, the Convention on the Privileges and Immunities of the Specialized Agencies combines the characteristics of both a multilateral and a bilateral convention. It is multilateral in so far as the States in acceding to the Convention exchange with each other their undertakings to accord specific privileges and immunities to the specialized agencies in return for each other party's having accepted a similar obligation. At the same time, the legal relationships set up by the Convention also comprise sets of bilateral undertakings exchanged between States and specialized agencies.

201. In that connection, it is worth noting that specialized agencies are by no means the mere passive beneficiaries of the Convention. It was precisely to further their functions that the Convention was adopted. First, by its resolution 179 (II) of 21 November 1947 the General Assembly of the United Nations submitted the text of the Convention "to the specialized agencies for acceptance and to every Member of the United Nations and to every other State member of one or more of the specialized agencies for accession". Secondly, to accomplish this acceptance by the agencies, the Convention provided that its terms could be adapted to the requirements of each individual agency by means of an annex, the final text of which was left to each agency to approve, in accordance with its constitutional procedure (see sects. 1 (iii) and 36 of the Convention). Thirdly, each specialized agency was also required to transmit to the Secretary-General of the United Nations a notification accepting the standard clauses as modified by its annex and expressly undertaking to give effect to all those sections placing obligations on the agencies (sect. 37). Irrespective of the question whether or not each agency may be described as a "party" to the Convention in the strict legal sense, each specialized agency has a direct interest in any proposal by an acceding State to alter in any way the terms of the Convention. It has therefore been the policy of the agencies not to accept reservations which would have the effect of introducing elements of difference in the treatment accorded by States to the specialized agencies under the Convention in matters of general concern; and the history of the Convention has consistently demonstrated a strong opposition by the specialized agencies to reservations in general. 114/ Thus, in accordance with established practice as concerns the Convention, the Secretary-General, when he receives an instrument of accession accompanied by a reservation, communicates its text to all States parties and to all other States Members either of the United Nations or of any specialized agency, as well as to the executive heads of the specialized agencies, and he so informs the State acceding subject to the reservation. He also refrains from stating in his circular note any date of entry into force as between the acceding State and the specialized agencies to which it undertakes to apply the Convention.

202. These reservations are customarily examined by the Heads of the specialized agencies, within the framework of the Administrative Committee on Coordination, to determine whether the reservations are to be considered incompatible with the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies. The Committee, which is composed of the executive heads of the specialized agencies and presided over by the Secretary-General of the United Nations, adopted, at its sixteenth session, in May 1953, a policy statement requesting the Secretary-General, as depositary, to continue to notify all executive heads of the specialized agencies of the terms of any reservations to the Convention on the Privileges and Immunities of the Specialized Agencies, and simultaneously to place the question of any such reservation on the agenda of the Administrative Committee on Coordination.

203. In every instance of a reservation to the above Convention, the Administrative Committee on Coordination has requested the Secretary-General of the United Nations, on behalf of the specialized agencies, to communicate with the Governments which had included reservations in their instruments and to indicate to them in which respect the agencies considered the reservations incompatible with the objects and purposes of the Convention and to seek to reach an understanding acceptable both to the Governments presenting the reservations and to the specialized agencies. Such consultations have usually resulted in the withdrawal of the reservations. Upon the withdrawal of the reservations (or possibly upon an acceptable redrafting), the Secretary-General immediately proceeds to the deposit of the instrument and informs accordingly all States concerned, specifying the date of the entry into force of the Convention for the State concerned.

G. Reservations made after the deposit of the related instrument

1. General principles

204. Under established customary international treaty law, as codified by the Vienna Convention on the Law of Treaties, 3/ reservations may only be made (when allowed) at the time of signing or of depositing an instrument of ratification or the like, or alternatively, with the unanimous consent of all parties concerned (see article 19 of the Vienna Convention).

2. Practice of the Secretary-General as depositary

205. The Secretary-General normally follows the above-mentioned principles. However, in a few cases, when he has received reservations after the deposit of the corresponding instrument, he has circulated the text of the reservation to all parties concerned and has proposed that in the absence of objections by any of those States within 90 days from the date of circulation, the reservations be deemed accepted as part of the State's notification, the absence of objections being then considered by the Secretary-General as amounting to a tacit acceptance by all parties concerned of the reservation in question.

206. This practice appeared all the more desirable in the many cases where the reservation was specifically authorized or where other States had made a reservation identical to that which the State concerned wished to make after the prescribed time. Examples of such reservations are those made by Greece and by the United Kingdom subsequent to the deposit of their instrument of ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral

Awards. 115/ In all cases, relevant notifications are addressed to all States concerned (see annex XXIII). The same practice has also been applied when States have wished to substitute new reservations for initial reservations made at the time of deposit, since this has amounted to a withdrawal of the initial reservations - which raised no difficulty - and the making of (new) reservations.

3. Notifications constituting authorized subsequent reservations

207. Article IV of the International Covenant on Civil and Political Rights 27/ provides in substance that States may, in case of public emergency, suspend the application of certain provisions of the Covenant (see para. 150 above). These derogations are thus allowed only in case of, and only as long as there exists a public emergency. However, such notifications made under article IV may be considered as being in the nature of authorized reservations, during a period of emergency.

H. Reservations made upon signature

1. General principles

208. The practice described above in respect of reservations accompanying instruments applies, mutatis mutandis, to the signature of treaties (the Secretary-General would not accept to receive a signature when he would not accept an instrument in deposit). Reservations made at the time of signature must be authorized by the full powers granted to the signatory by one of the three qualified authorities or the signatory must be one of these authorities (see chap. VI).

2. Effect of reservations made upon signature

209. The reservation has only a declaratory effect, having the same legal value as the signature itself. Reservations formulated when signing the treaty subject to ratification, acceptance or approval must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case, the reservation shall be considered as having been made on the date of its confirmation (see article 23, para. 2, of the Vienna Convention on the Law of Treaties 3/).

I. Objections to reservations

1. General principles

210. Normally, a signatory or contracting State, when informed by the Secretary-General of the deposit of an instrument containing a reservation, has the option of objecting to the reservation, inter alia, if in its opinion the reservation is incompatible with the purpose and object of the treaty. The objecting State may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving State.

2. The Vienna Convention system

211. The Vienna Convention on the Law of Treaties adopts the same principle as General Assembly resolution 598 (VI), viz., the States parties - and only the States parties - are competent to pass upon the legal effect of reservations and objections. However, the Convention specifies, or rather limits, that competence by virtue of the following two presumptions: (a) an objection does not preclude the entry into force of the treaty as between the objecting and reserving State unless a contrary intention is definitely expressed (article 20, para. 4 (b), of the Convention); and (b) a reservation is considered accepted if no objection is raised within a period of 12 months (article 20, para. 5, of the Convention), the time-limit for objections by States therefore being one year after receipt of notification of a reservation.

3. Practice of the Secretary-General

212. The Secretary-General has not felt that the principle in resolution 598 (VI) is to be considered altered by the two above-mentioned presumptions. Thus, when a State objects to a reservation without specifying whether the objection is to preclude the entry into force of the treaty as between the objecting and reserving States, the Secretary-General does not act upon the presumption of article 20, paragraph 4 (b), of the Convention, does not include any indication on this question in his depositary notification and restricts himself to communicating the objection (see paras. 184-187 above). States, in order to make known their position without delay (or without uncertainty, where non-parties to the Vienna Convention are involved), will often specify in the objection whether it precludes entry into force as between themselves and the reserving State.

213. As concerns the second presumption in the Vienna Convention, i.e., the presumed acceptance of the reservation in the absence of objections within a year, the Secretary-General also does not feel that this presumption is binding on him. He therefore accepts for deposit objections made even after the time lapse provided for in the Convention. However, taking into account the indicative value of this provision in the Vienna Convention, the Secretary-General, when thus receiving an objection after the expiry of this time lapse, calls it a "communication" when informing the parties concerned of the deposit of the objection.

214. As with objections to corrections (see para. 51), the Secretary-General communicates all objections to reservations emanating from another contracting or signatory party. He also communicates "objections" from non-contracting or signatory States, but terms them communications; since they are of no legal effect these communications are not registered under Article 102 of the Charter, nor are they published in the United Nations Treaty Series. An exception was made in the case of objections made by the Union of Soviet Socialist Republics to the extension by the Federal Republic of Germany of the application of certain treaties to Berlin (West), even when the Soviet Union was not a party to the treaty concerned. The basis for the decision to accept such objections as such was that the extension of the application of the treaty to Berlin (West) could result in a modification of the scope of the Quadripartite Agreement and Final Protocol on Berlin. 116/ In a similar fashion, "counter-objections" by the other three parties to the Quadripartite Agreement or Protocol to the objections by the Soviet Union were also accepted for deposit. 117/

215. At one time, the Union of Soviet Socialist Republics, in a note addressed to the Secretary-General, had objected to the circulation by the Secretary-General of communications by the Federal Republic of Germany concerning the application of treaties to Berlin (West) on the ground that the Federal Republic of Germany was not then a Member of the United Nations. The Secretary-General duly circulated the Soviet Union's communication to all interested States, together with the relevant portion of his reply, which reads as follows:

> "The note addressed to the Secretary-General by the Permanent Observer of the Federal Republic of Germany concerned several multilateral treaties for which the Secretary-General acts as depositary and to which the Federal Republic of Germany is a party. Both that note and the other notes, referred to above, related to a matter which concerns the scope of application of those treaties and thus appeared to fall within the purview of communications which the depositary is normally required to bring to the attention of all interested States."

For the above-mentioned reasons, the Secretary-General, in the exercise of his depositary functions, deemed it necessary to bring the communications received from the Federal Republic of Germany, which was a party to the treaties concerned, to the attention of all Member States, as well as those non-member States, which were or might become parties to the treaties concerned.

J. Withdrawal of reservations and objections

216. Unless the treaty itself provides otherwise, reservations and objections may be withdrawn at any time (see article 22 of the Vienna Convention on the Law of Treaties 3/). Withdrawal must be made in writing and under the signature of one of the three recognized authorities, since such withdrawal shall normally result, in substance, in a modification of the scope of the application of the treaty.

K. Declarations

1. General principles

217. Declarations, however they may be known (communications, interpretative declarations, understandings, etc.), either made at the time of signature or at the time of deposit of a binding instrument, are to be distinguished from reservations in that they do not purport to exclude or modify the legal effects of the treaty. The purpose of declarations is rather, in principle, to make more explicit the meaning of a particular provision. However, declarations are made in a political context - for example, to express satisfaction at the adoption of the treaty, or to express regret that a provision has not been included in the treaty and the hope that through an amendment it will be in the future, or to express dismay that a provision has been included which the State concerned finds offensive. While declarations are usually made at the time of the deposit of the corresponding instrument or at the time of signature, they are sometimes made in contemplation of the impending signature of the treaty, after its adoption, and the text of such declarations is then frequently reproduced in the Final Act of the Conference that adopted the treaty.

2. Practice of the Secretary-General

218. Even if it is called a declaration, if the statement is in fact a reservation or an instrument, it is treated as such; otherwise, the Secretary-General simply circulates the declaration. Declarations - especially interpretative declarations - are not totally without effect since, as indicated above, while they normally purport not to modify the treaty, their aim is to make more explicit the meaning of a particular provision as the declaring State understands it, and it is on that basis that the Secretary-General communicates them to the States concerned. It is then of course for the parties or, possibly, to the organization concerned to determine to what extent the interpretation given by that State should be taken into consideration in case of a dispute.

219. As concerns declarations made in final acts in contemplation of the immediate signature of the treaty, the Secretary-General has considered them to have been made at the time of signature and has circulated their text accordingly. Thus those declarations which related directly to the implementation of the Convention and which were 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 of 22 March 1989 118/ were considered as made upon signature by those States that signed the Convention on the date of its adoption and were circulated accordingly.

220. In a similar fashion, the Secretary-General has accepted declarations which referred to related documents. Thus, when Argentina deposited an instrument of accession to the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques of 10 December 1976 (the ENMOD Convention) 119/ which included a declaration to the effect that Argentina interpreted certain provisions of the Convention in accordance with understandings adopted as part of the report of the Conference of the Committee on Disarmament to the General Assembly at its thirty-first session, 120/ the text of those understandings was considered part of Argentina's declaration, and included as such in the corresponding depositary notification.

Chapter IX

ENTRY INTO FORCE

221. Treaties enter into force, viz., they start producing their effects and become binding on the parties thereto, in accordance with the provisions of the treaty. The treaty may provide that it shall enter into force on a specified date, or that it shall enter into force on the date when certain conditions are met. Whatever the circumstances, the date of entry into force is normally determined by the depositary, who to that end must verify that the conditions set forth by the treaty have been met (see paras. 184-187 above).

A. Initial entry into force

222. The conditions contained in those clauses which govern such entry into force may vary.

1. Entry into force on a set date

223. Sometimes the date is fixed by the agreement itself. Such was the case for 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, done at Geneva on 16 June 1949, 121/ which stipulated in its article III that it was to enter into force on 1 January 1950. In the absence of other provisions, the Agreement entered into force on that date for those States that, at that date, had accepted to be bound by the Agreement. However, such a clause is unusual in multilateral treaties.

2. Entry into force under conditions and a date determined according to provisions of the treaty

224. Many treaties provide that entry into force shall take place on the date on which a specified number of States have accepted to be bound. Thus article 12 of the Agreement establishing the Pepper Community of 16 April 1971 122/ provides that the Agreement shall enter into force between the contracting parties that have deposited instruments of ratification or acceptance when not less than three of them have deposited such instruments.

225. Other treaties stipulate that a certain period must elapse between the date on which the required number of instruments is deposited and the entry into force. Thus the Convention on the Political Rights of Women, 123/ concluded at New York on 31 March 1953, provides, for example, in its article VI that it "shall come into force on the nineteenth day following the date of deposit of the sixth instrument of ratification or accession". And article 49 of the International Covenant on Civil and Political Rights 26/ provides that "the present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession."

226. Some treaties provide for additional conditions to that of the deposit of a number of instruments. For example, article 10 (1) of the Protocol of 28 September 1984 to the 1979 Convention on Long-range Transboundary Air

Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP) 124/ provides as follows:

"Article 10

"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 ..."

This means that the instruments deposited by Canada and the United States, which are not within the geographical scope of EMEP, were not to be counted, i.e., that, the deposit of 19 other instruments was required as one of the conditions for the Protocol to enter into force.

227. A second condition was provided for by subparagraph (b) of article 10 (1), which reads as follows:

"The aggregate of the United Nations assessment rates for such States and organizations exceeds forty per cent."

The Secretary-General, before announcing the entry into force of the Protocol, therefore also had to ascertain that the above percentage had been met. It is to be noted that States not Members of the United Nations, such as Switzerland, were included in the calculation since as observers they are assessed on the same basis as Members. Another example of a treaty with additional conditions for its entry into force is that of the Convention on the Intergovernmental Maritime Consultative Organization, 125/ which provided in its article 60 that it would enter into force "on the date when 21 States, of which seven shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties ...". The entry into force was thus not only conditional on the deposit of a specified number of instruments of acceptance, but also subject to the supplementary provision regarding the tonnage which a certain number of States accepting the Convention had to possess. When the first condition (deposit of 21 instruments) was satisfied, the Secretary-General, who under article 61 of the Convention was entrusted with the depositary's normal function of informing the States concerned of the date of entry into force, had to make sure that 7 of the 21 Governments that had deposited valid instruments of acceptance possessed a fleet of a tonnage amounting to not less than 1 million gross tons. Before informing the States concerned, the Secretary-General therefore notified the Chairman of the Preparatory Committee of the Intergovernmental Maritime Consultative Organization of his intention to announce the entry into force of the Convention on the basis of the instruments deposited and the data available to him regarding tonnage. The Chairman of the Preparatory Committee confirmed to the Secretary-General the accuracy of the data, and the Secretary-General then formally notified all the States concerned of the entry into force of the Convention.

228. In a similar fashion, the Montreal Protocol on Substances that Deplete the Ozone Layer 126/ provides as follows:

"ARTICLE 16: 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 ..."

The requisite number of instruments was duly received prior to 1 January 1989. However, since the Protocol itself did not contain any indication as to the "estimated global consumption of the controlled substances", the Secretary-General only notified the entry into force of the Protocol after having obtained confirmation that, in the light of data provided by the parties, the number of instruments deposited exceeded the required figure.

229. The conditions for the entry into force of some treaties are even more complex. This is frequently the case for commodities agreements. Thus, for example, article 66 of the International Cocoa Agreement, 1980, 92/ provides as follows:

"Article 66. ENTRY INTO FORCE

"1. This Agreement shall enter into force definitely on 1 April 1981, or on any date within two months thereafter, if by such date Governments representing at leave five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex D and Governments representing importing countries having at least 70 per cent of total imports as set out in annex E have deposited their instruments of ratification, acceptance, approval or accession with the depositary ..."

230. A few treaties provide, as an additional condition to the usual requirement that a specified member of States have accepted to be bound, that those States then specifically agree to the entry into force and so notify the Secretary-General as depositary. Thus article 25 of the Constitution of the United Nations Industrial Development Organization 127/ provides as follows:

"Article 25. ENTRY INTO FORCE

"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.

"2. This Constitution shall enter into force:

"(a) For States that participated in the notification referred to in paragraph 1, on the date of the entry into force of this Constitution;

"(b) For States that had deposited instruments of ratification, acceptance or approval before the entry into force of this Constitution but did not participate in the notification referred to in paragraph 1, on such later date on which they notify the Depositary that this Constitution shall enter into force for them;

"(c) For States that deposit instruments of ratification, acceptance, approval or accession subsequent to the entry into force of this Constitution, on the date of such deposit."

231. In a similar manner, article 21 of the Statutes of the International Centre for Genetic Engineering and Biotechnology, concluded on 13 September 1983, 70/ provides as follows:

"Article 21

"Entry into force

"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."

232. Thus, whereas article 25 (2) (b) of the Constitution of the United Nations Industrial Development Organization Constitution, required notification of acceptance of entry into force by all States that had deposited instruments before the entry into force of the Constitution, this was not necessary under the Statutes of the Centre, since the requirement of a subsequent notification was linked to the need to "ascertain that sufficient financial resources" had been ensured. Once 24 States had so ascertained, the Statutes entered into force for all States that had deposited instruments, even for the States that had deposited a notification with the Secretary-General.

3. Calculation of the number of instruments

233. If a State withdraws its instrument (see para. 159) before the conditions for entry into force have been met, the State will cease to be counted for entry into force purposes. And conversely, once the conditions for entry into force have been met, the withdrawal of an instrument previously counted for entry into force will not be taken into account and will not result in the postponement of the entry into force.

234. A special situation occurred in respect of the Special Protocol concerning Statelessness of 12 April 1930, 128/ which was to enter into force upon the deposit of 10 instruments. Nine instruments had already been deposited when, on 25 May 1973, Fiji deposited an instrument of succession; the Secretary-General, in accordance with article 9 of the Protocol, duly established and circulated a depositary notification and a procès-verbal notifying the entry into force of the Special Protocol. However, one of the initial nine instruments was that of China, which had been deposited with the League of Nations on 14 February 1935. The current Government of China, upon receipt of the depositary notification, informed the Secretary-General that it did not recognize as binding on China the Protocol signed and ratified by "the defunct Government of China" and that, accordingly, it considered the instrument to be null and void. It was then decided to consider that the conditions for entry into force had in fact never been met, and that the Special Protocol would not enter into force as anticipated. The relevant depositary notification was accordingly circulated.

235. In a similar fashion, if a State that has deposited an instrument ceases to exist after the conditions for entry into force have been met, this is without

consequence as concerns entry into force. Conversely, if the State ceases to exist before the conditions for entry into force have been met, that State will no longer be counted in the number necessary for the entry into force.

4. Calculation of the effective date of initial entry into force

236. Once the Secretary-General, acting in his capacity as depositary, has ascertained that the conditions for entry into force have been met, he announces the corresponding entry into force. If, however, the treaty does not enter into force immediately, but only after a period of time, he calculates the prescribed periods as follows:

(a) For clauses such as "The Convention shall enter into force on the thirtieth day following [or after] the deposit with the Secretary-General of the United Nations of the [...eth] instrument of ratification ...", the time runs from the day following the deposit of the last required instrument. Thus, in the above example, if the deposit of the last instrument is effected on 15 March, the period of 30 days will begin on 16 March, and the Convention will enter into force on 14 April;

(b) For clauses such as "The Convention shall enter into force three months after the deposit ...", the time runs from the day of the deposit of the last required instrument. Thus, in the above example, if the deposit was effected on 15 March, the Convention would either enter into force on 15 June (the same day (15) but three months later). Exceptionally, if the deposit was effected, for example, on 31 March, since there is no corresponding 31 June, the Convention would then enter into force on the last day of June, i.e., 30 June. Similarly, upon the relevant deposit on 30 November the Convention would enter into force on 28 February (or on 29 February for leap years). But whenever there is a "same" day X months later, that day is the day of entry into force.

5. Provisional entry into force

237. Agreements may also provide that, upon certain conditions being met, the agreements shall come into force provisionally. Thus, the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed at Geneva on 30 October 1947, 129/ provides that:

> "1. The Governments ... undertake, provided that this Protocol shall have been signed on behalf of all the foregoing Governments not later than November 15, 1947, to apply provisionally on and after January 1, 1948:
>
> "(a) Parts I and III of the General Agreement on Tariffs and Trade, and
>
> "(b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation."

This condition having been met, the Secretary-General announced that the Protocol had entered into force on 1 January 1948 (although the General Agreement, itself, never entered into force).

238. Many examples of provisional application may be found in commodity agreements. Thus, for example, article 55 (2) of the Sixth International Tin Agreement, 1981, 130/ provides as follows:

> "If, on 1 July 1982, this Agreement has not entered into force in accordance with paragraph 1 of this article, it shall enter into force provisionally if by that date Governments of producing countries accounting for at least 65 per cent of the total production percentage as set out in annex A and Governments of consuming countries accounting for at least 65 per cent of the total consumption percentage as set out in annex B have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary under article 53 that they will apply this Agreement provisionally."

239. An even more "subsidiary" provisional entry into force is also frequently provided for in commodity agreements, in the event that the required qualified number of instruments have not been deposited by the date provided for in the Agreement. Thus, paragraph 3 of the above-mentioned article 55 of the Sixth International Tin Agreement provides as follows:

> "If, on 1 June 1982, the required percentages for entry into force of this Agreement in accordance with paragraph 1 or paragraph 2 of this article are not met, the Secretary-General of the United Nations shall invite those Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally, to meet to decide whether this Agreement shall enter into force definitely or provisionally among themselves, in whole or in part, on such date as they may determine. The Secretary-General of the United Nations shall also invite other Governments which have signed this Agreement or have participated in the Fifth International Tin Agreement to attend this meeting as observers."

240. A provisional entry into force clause of an unusual character was included in the Agreement adopted on 28 July 1994 relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, article 7 (1) (a) and (b) of which provides as follows:

> "Article 7
>
> "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."

In that case the traditional requirement of an express notification has been replaced by an implicit consent to the provisional application of the Agreement,

merely upon the adoption of the Agreement or its signature. Although such a method of entry into force is not customary and was not envisaged in the Vienna Convention on the Law of Treaties, even for a provisional application, it was deemed acceptable since the provisions in question showed that the parties' clear will was to dispense with formal notifications and the entities concerned may opt out of such "automatic" provisional application by so notifying the depositary.

241. The Secretary-General, as depositary, thus must review and verify the various entry into force clauses and the conditions set forth therein, so as to determine the exact date of the definitive and/or provisional entry into force of the treaties deposited with him, and to advise accordingly all parties concerned.

6. Procès-verbal of entry into force

242. Certain agreements (for example, the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character of 15 July 1949 131/) provide that a procès-verbal of entry into force shall be drawn up; in such cases, the Secretary-General duly complies with that condition in his capacity as depositary. However, such cases have become very rare, and normally the parties concerned are informed of the entry into force by a depositary notification (see annex XXIV).

B. Subsequent entry into force for additional parties

1. Provisions concerning entry into force

243. After the initial entry into force, the date of the entry into force for additional parties is also determined by the Secretary-General on the basis of the relevant provisions of the treaty. Sometimes the treaty provides that the treaty shall enter into force on the day of the deposit of the instrument. Other treaties provide for the entry into force after a certain period of time after the deposit. Thus, for example, the International Covenant on Civil and Political Rights 27/ provides that:

> "For each State ratifying the present International Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession." (art. 49 (2))

2. Calculation of effective date for instruments of ratification, acceptance and accession deposited after entry into force

244. Provisions concerning the effective date of instruments of ratification, acceptance or accession deposited after the entry into force of an agreement, or after the number of instruments required for entry into force has been reached, can be found in nearly all conventions. These provisions are generally similar to those governing the initial entry into force. For example, article 84, paragraph 1, of the Vienna Convention on the Law of Treaties 3/ provides as follows:

"Article 84

"Entry into force

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession."

and paragraph 2 of that same article provides that:

"For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession."

The Secretary-General thus applies to such instruments of ratification and accession the same practice and the same rules for calculating their effective date as those followed with regard to the initial entry into force of the agreement, the calculation varying according to the relevant provisions of each text.

245. Difficulties have occurred, however, when the subsequent entry into force provisions were ambiguous. Such was the case with the Convention on a Code of Conduct for Liner Conferences of 6 April 1974, 132/ of which article 49 reads as follows:

"Article 49. Entry into force

"(1) The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance ...

"(2) For each State which thereafter ratifies, accepts, approves or accedes to it, the present Convention shall come into force six months after deposit by such State of the appropriate instrument."

Here and elsewhere, the use of the term "thereafter" (and, sometimes "subsequently") is ambiguous. The consistent practice of the Secretary-General, as depositary, has been to consider that "thereafter" applies to the date of the fulfilment of the conditions for the general entry into force and not to the date of the actual entry into force. This is based on the assumption that all participants are entitled to an equal waiting period between the deposit of their instrument and the effective date. A contrary interpretation would result in an instrument possibly taking effect in one day (if it were deposited the day before the actual date for the general entry into force); while not inconceivable, such an interpretation would result in many practical difficulties. It is precisely to avoid such ambiguity that almost all subsequent treaties deposited with the Secretary-General and which provide for an intervening period follow the wording of article 84, paragraph 2, of the Vienna Convention on the Law of Treaties "For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument ... the Convention shall enter into force on the thirtieth day after deposit ..." (see para. 244 above). Indeed, the prevalence in most treaties of the wording of the Vienna Convention strongly supports the Secretary-General's interpretation.

246. The effective date may be contingent, not upon the deposit of the instrument with the Secretary-General, but on an action taken by another authority. Thus, although this is an exceptional case, article 11 (2) of the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms of 29 October 1971 10/ provides as follows:

> "For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, the Convention shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization informs the States, in accordance with article 13, paragraph (4), of the deposit of its instrument."

In accordance with this provision, the Secretary-General receives the instrument and then advises the Director-General of the World Intellectual Property Organization of the deposit. The Director-General of the World Intellectual Property Organization, in turn, notifies the States concerned and communicates to the Secretary-General the date of his notification (see paras. 17 and 18 above). The Secretary-General then performs all necessary depositary duties, including the circulation of the corresponding depositary notification.

247. Similarly, membership in the African Development Bank takes effect under article 64 (2) of its constitutive act 11/ only on the date appointed by its Board and not on the date of the deposit of the corresponding instrument of accession with the Secretary-General, even if such deposit has been effected at an earlier date (see also para. 138 above).

Chapter X

AMENDMENTS, EXTENSION, SUSPENSION AND TERMINATION OF A TREATY

A. Amendments

1. Under procedures provided for in the treaty

248. Most treaties provide for their possible amendment and contain provisions outlining the corresponding procedure, such as: (a) approval by a number of parties; (b) decision by a governing body; and (c) revision.

(a) Amendments deemed accepted upon approval by a number of parties

249. For example, Article 108 of the Charter of the United Nations reads as follows:

"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."

In such cases, where the deposit of instruments is required, 133/ the Secretary-General, as depositary, proceeds as he would for the entry into force of an original treaty (see chap. IX).

(b) Amendments decided by a governing body

250. Some treaties, especially constitutive acts, provide that the treaty may be amended by a governing body. Thus article 58 of the Agreement establishing the Caribbean Development Bank of 18 October 1969 134/ provides as follows:

"AMENDMENTS

"1. This Agreement may be amended only by a resolution of the Board of Governors adopted by a vote of not less than two thirds of the total number of governors representing not less than three fourths of the total voting power of the members.

"2. Notwithstanding the provisions of paragraph 1 of this article, the unanimous agreement of the Board of Governors shall be required for the adoption of any amendment modifying:

"(a) The right to withdraw from the Bank;

"(b) The limitations on liability provided in paragraphs 7 and 8 of article 6; and ..."

In such cases, the Secretary-General, upon being informed of the decision of the governing body, duly communicates the amendments to all interested parties and

circulates the relevant information in the publication Multilateral Treaties Deposited with the Secretary-General. 135/

(c) Amendments effected pursuant to a revision procedure

251. Treaties may also provide for a revision procedure. For example, article 23 of the International Convention on the Elimination of all Forms of Racial Discrimination of 7 March 1966 136/ provides as follows:

> "1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
>
> "2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request."

In accordance with these provisions the Government of Australia proposed amendments to the Convention which were duly communicated by the Secretary-General to the States parties. At their fourteenth meeting, the State parties adopted the amendments and decided that they would take effect upon their approval by the General Assembly and their acceptance by two thirds of the States parties. The General Assembly endorsed the amendments 137/ by its resolution 47/111 of 16 December 1992. The Secretary-General then duly communicated the text of the amendments to the States parties so that they might deposit with him the relevant instruments of acceptance.

2. In the absence of provisions concerning amendments

252. Other multilateral treaties, however, do not contain any provisions as to amendments. Such treaties may nevertheless be amended. One possibility would be by a unanimous decision of the parties, but in practice amendments are approved in accordance with established international customary law, as codified by the Vienna Convention on the Law of Treaties, 3/ the relevant provisions of which read as follows:

> "Article 40. Amendment of multilateral treaties
>
> "1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
>
> "2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
>
> "(a) The decision as to the action to be taken in regard to such proposal;
>
> "(b) The negotiation and conclusion of any agreement for the amendment of the treaty.
>
> "3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended."

253. Amendments are most often effected through an amending protocol. Thus when it appeared necessary to amend the Convention on the Limitation Period in the

International Sale of Goods of 14 June 1974, the General Assembly, by its resolution 33/93 of 16 December 1978, decided that the United Nations Conference on Contracts for the Sale of Goods should consider the desirability of preparing a Protocol to the Convention on the Limitation Period on 11 April 1980. The Conference adopted the Protocol, 37/ which was opened for accession in accordance with its provisions. The Secretary-General, as depositary, took all necessary actions, as he would for an original treaty.

254. A difference should be drawn between an amending protocol and a supplementary protocol. The purpose of an amending protocol is to alter the wording of an earlier treaty. Such was the case of the protocol amending the Single Convention on Narcotic Drugs, 1961, of 25 March 1972. 36/ Such protocols are normally open only to the parties to the treaty that is being amended, since they are purely subsidiary, dependent agreements, having no other object than to amend the treaties, and hence it would be meaningless for any State not already bound by the treaties to become party to such protocols. Thus, before accepting any instruments, the Secretary-General must verify that the State concerned is a party to the initial treaty. If it is not, and if participation in the initial treaty is possible, the Secretary-General will so indicate to the State concerned, in order that it may then also participate in the amending protocol, and accordingly in the amended treaty. Once the amending protocol has entered into force, however, other States may become parties to the amended treaty, and possibly also to the unamended treaty in relation to parties to that Treaty not bound by the amending protocol (see, for example, article 19 of the above-mentioned Protocol).

255. Participation in supplementary protocols, on the other hand, in view of their object, is not always limited to the parties to the initial treaty. Certain protocols, although linked to an initial treaty, in fact constitute independent and complete international instruments. For example, the Protocol relating to the Status of Refugees 107/ does not amend the Convention relating to the Status of Refugees, 17/ but rather binds the parties to the Protocol to observe the substantive provisions of the Convention as these provisions have been broadened by the provisions of the Protocol. Accordingly, the Protocol is open, not only to the States parties to the Convention, but also to any other State Member of the United Nations or member of any of the specialized agencies or to States to which an invitation to accede may have been addressed by the General Assembly of the United Nations (see article V).

B. Duration, extension (prorogation) and suspension or termination of a treaty

1. Duration

256. Most treaties are concluded for an indefinite period of time. However, some treaties provide for their termination upon a set date, or a date to be determined. For example, under its article 68 (1) the International Coffee Agreement, 1976, 65/ was to remain in force "until 30 September 1992 ...". In any event, the Secretary-General does not monitor the duration of a treaty and takes no particular action when the treaty simply lapses in accordance with its provisions. For the termination of a treaty by a subsequent action, see paragraphs 260 to 262. For denunciation/withdrawal by a party, see paragraph 160.

2. Extension (prorogation)

257. The duration of a treaty may nevertheless be extended beyond its original term, either in accordance with provisions of the treaty or by decision of the parties. In fact, such an extension would only be the application to a special situation of the general question of amendments, and the Secretary-General's practice with regard to the latter applies mutatis mutandis to extension.

258. An example of extension according to provisions of the treaty may be found in article 57 (b) of the International Tin Agreement 1975, 138/ which reads as follows:

> "The Council may by a two-thirds majority of the total votes held by all producing countries and a two-thirds majority of the total votes held by all consuming countries extend the duration of this Agreement by a period or periods not exceeding twelve months in all."

In accordance with that provision, the Agreement was in fact extended by such a resolution of the Council. 139/

3. Suspension, termination

259. The situation is identical as concerns the termination of the Agreement or its suspension, or the suspension of some of its provisions. An example of such a suspension may be found in International Coffee Council resolution 347 of 3 July 1989, which reads in part as follows:

> "The International Coffee Council
>
> "Resolves:
>
> ...
>
> "2. With effect from 1 October 1989 and throughout the life of the Agreement as Extended:
>
> "(a) The provisions of the articles contained in chapter VII shall be suspended and shall remain suspended with the exception of paragraph (1) of article 38 and paragraph (1) of article 43 ...
>
> "3. With effect from 1 October 1989 and throughout the life of the Agreement as Extended:
>
> "(a) The verification of stocks in exporting member countries provided for under the provisions of article 51 of chapter VIII and of resolution 286 shall be suspended;
>
> "(b) There shall be no contributions to the Special Fund under the provisions of article 55 of the Agreement; and
>
> "(c) The provisions of articles 50 and 51 of the Agreement shall be suspended."

260. An example of a provision on termination may be found in article 74 (5) of the International Cocoa Agreement, 1972, 140/ which reads as follows:

"The Council may at any time, by special vote, decide to terminate the Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of members under article 37 shall continue until the financial liabilities relating to the buffer stock have been discharged or until the end of the third quota year after its entry into force, whichever is the earlier. The Council shall notify the Secretary-General of the United Nations of any such decision."

261. In all these circumstances, as indicated above, the Secretary-General will proceed in the same fashion as for amendments, i.e.: (a) he will inform all parties through a depositary notification of the decision taken by the relevant body; (b) if acceptance of the decision is required, he will circulate its text (see chap. IV) and accept the corresponding instruments in accordance to practice (see chap. VII); and (c) he will include all pertinent information in the publication Multilateral Treaties Deposited with the Secretary-General.

262. Finally, the case may arise where a treaty is terminated under the provisions of a new treaty relating to the same subject-matter, and only the new treaty then applies. Thus the Single Convention on Narcotic Drugs, 1961, 141/ in its article 44 provides for the termination of certain earlier treaties in the narcotics field as between parties to the Single Convention. If not all the parties to the earlier treaty become parties to the later one, then the earlier treaty remains in effect between those that have accepted the later treaty and those which have not done so. In view of the large number and the complexity of possible situations that may result from the application of both the earlier and the later treaty by various States, the Secretary-General does not specify between which States the treaties apply and, when notifying the parties of the deposit of an instrument in respect of the said treaties, restricts himself to recalling the relevant provisions of the treaties concerned.

Chapter XI

TERRITORIAL APPLICATION

A. Background

263. Parts of the territory of a State may under its domestic law be subject to a separate legal regime. A frequent case is that of so-called non-metropolitan Territories versus the metropolitan territory, viz., the mother country as distinct from its colonies and overseas Territories or dependencies. When such non-metropolitan Territories exist, local circumstances frequently make it difficult or impossible to apply the provisions of the treaty to them in the same fashion as to the metropolitan territory. The same may apply to non-autonomous or non-independent Territories for the conduct of whose foreign relations certain States are internationally responsible.

264. On 14 December 1960, the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. 142/ As at 30 April 1992, more than 60 former colonial Territories, inhabited by more than 80 million people, have attained independence and joined the United Nations as sovereign Members.

265. As an increasing number of Territories have become independent the instances of application of treaties to such Territories have become fewer and the difficulties encountered have lost much of their topicality.

B. Treaties which include clauses concerning territorial application

1. General principles

266. In order to mitigate possible difficulties which might arise, a number of treaties include specific provisions which limit or regulate the application of the treaty to Territories. Thus article XII of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, 44/ which provides for the possible extension of the Convention to Territories, reads as follows:

"Article XII

"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."

267. Treaties may, conversely, provide for the optional exclusion of Territories from their application. Thus the Convention on the Recovery Abroad of Maintenance of 20 June 1956 143/ reads as follows:

"Article 12

"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."

268. Finally, other treaties take into consideration the fact that the previous consent of non-metropolitan Territories may be required by the domestic law of the State concerned. Thus, for example, the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium of 23 June 1953 144/ provides in its article 20 as follows:

"Article 20

"This Protocol shall apply to all the non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of a non-metropolitan territory is required by the Constitution of the Party or of the non-metropolitan territory, or required by custom ..."

2. Practice of the Secretary-General when there are territorial clauses

269. As he does in the case of reservations (see chap. VIII), the Secretary-General, as depositary, follows the relevant provisions of the agreements, when necessary drawing the attention of the Governments concerned to the measures incumbent on them under those provisions and to their effects.

270. Some amending protocols have no territorial application clause, while the agreements they are designed to amend do contain such a clause. Examples include the Protocol of 4 May 1949 145/ amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910, 146/ and the Protocol of 9 December 1948 147/ amending the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928. 148/

271. When a State becomes a party to such a protocol it becomes a party to the convention as amended as soon as the amendments have entered into force. If the State had extended the application of the original convention to certain of its non-metropolitan Territories, the amended convention, once in force, applies only to those same Territories. In this connection during the discussions in the Third Committee of the General Assembly at its second regular session on the transfer to the United Nations of the functions and powers exercised by the League of Nations under the 1921 Convention for the Suppression of the Traffic in Women and Children, 149/ the 1933 Convention for the Suppression of the Traffic in Women of Full Age 150/ and the 1923 Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, 151/ each of which

contained a territorial application clause, it was proposed that the relevant clauses should be deleted from the Conventions. 152/ Those in favour of deletion pointed out that the Conventions in question were of a humanitarian character and should therefore be applied as widely as possible. On the other hand, States having responsibility for the external affairs of non-metropolitan Territories argued that some of those Territories enjoyed local autonomy and self-government and that their consent had to be secured in advance. The Third Committee recommended the deletion of the territorial clause from the Conventions in question and its recommendation was adopted by the General Assembly. 153/ However, when the question of deleting the territorial application clause from the 1904 International Agreement for the Suppression of the White Slave Traffic, 154/ and the 1910 International Convention and Agreement for the Suppression of the Circulation of Obscene Publications 155/ was raised in the Sixth Committee of the General Assembly during the first part of its third regular session, at the time of the transfer to the United Nations of the functions and powers previously exercised by the French Government under those Agreements, the Sixth Committee and the General Assembly were not in favour of the deletion of those clauses. 156/ The only change made was in the relevant paragraph 1 of article 11 of the 1910 Convention on White Slave Traffic, in respect of the transfer of depositary functions from the French Government to the Secretary-General; the paragraph was amended to read:

> "Should a Contracting State desire the present Convention to come into force in one or more of its colonies, possessions or areas under consular jurisdiction, it shall for this purpose notify its intention by an instrument which shall be deposited in the archives of the United Nations. The Secretary-General of the United Nations shall send a certified copy to each of the Contracting States and to all the Members of the United Nations, and shall at the same time inform them of the date of deposit."

A similar change was made with regard to denunciation in respect of colonies, which were also to be notified by the Secretary-General. 157/

3. "Federal clauses" (territorial units)

272. Declarations of territorial application are to be distinguished 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 93 (1) of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, 37/ for example, provides as follows:

"Article 93

> "(1) If a Contracting State has two or more territorial units in which, according to its Constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time."

In accordance with the relevant provisions of the Convention, the Government of Canada, when depositing its instrument of accession, declared that the Convention would apply to a number of provinces, and subsequently that the

Convention would apply to additional provinces. 158/ The Secretary-General, as depositary, duly circulates and records such declarations.

C. Absence of territorial clauses

1. General principles

273. A number of treaties, however, do not include any specific clause concerning the option of extending the application of a treaty to non-metropolitan Territories for whose relations a State is responsible. Two questions then arise: first, is the treaty, in the absence of a clause, "automatically" applicable to the entire territory of the State concerned; and secondly, may a State, when becoming a party to a treaty that is silent as to territorial application include in its instrument a territorial reservation, i.e., a reservation to the effect that the treaty or some of its provisions shall not apply to certain Territories? In the performance of his depositary duties, the Secretary-General has, when applicable, been guided by the travaux préparatoires, and eventually, precedents, and also by the nature of the treaty.

274. Thus, in the case of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 30/ and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947, 8/ the Secretary-General took the position, as a matter of principle, that in view of their nature the Conventions should be regarded as automatically applying to the Territories for the international relations of which the acceding States were responsible.

275. When one State made a declaration concerning the non-application to certain of its non-metropolitan Territories of the Convention on the Privileges and Immunities of the Specialized Agencies, the Secretary-General advised States parties to the Convention and the specialized agencies that the instrument had been transmitted for deposit accompanied by a territorial reservation. Since the Administrative Committee on Coordination of the specialized agencies and several States parties expressed objections, the Secretary-General did not treat the instrument as having been deposited and he invited the State that had transmitted the instrument to reconsider its reservation. The practice as concerns the Conventions on Privileges and Immunities is of course of a special nature (see para. 199 above).

276. For other treaties, it might be considered that, in principle, the absence of a territorial clause in such treaties would normally lay upon States an obligation to apply the treaty to their non-metropolitan Territories. Indeed, article 29 of the Vienna Convention on the Law of Treaties 3/ states as follows:

"Article 29

"Territorial scope of treaties

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

However, the nature of the treaty and the intention of the negotiating States must also be taken into account.

277. When neither the nature of the treaty nor other special circumstances (e.g., the fact that the treaty is the constitutive act of an international organization) mandate the non-acceptance of the instrument containing a declaration as to the limited application or non-application of a treaty to Territories, the Secretary-General has been guided by the general principles of resolution 598 (VI), which he has deemed to apply, mutatis mutandis, to "reservations" as to the applicability to Territories. Accordingly, he has accepted instruments containing reservations as to the limited application or non-application to Territories, leaving it to the other parties to draw the legal consequences of such declaration that they may see fit.

278. And in fact a number of States have made such declarations concerning Territories. Some examples of these are discussed below.

2. Declaration of non-application

279. Thus, for example, when New Zealand acceded on 20 December 1974 to the Customs Convention on Containers, 1972, 159/ it declared that the accession to the Convention would not extend to the Cook Islands, Niue and the Tokelau Islands. 160/

280. Possibly after additional local formalities have been accomplished, some of the notifications of non-application have subsequently been withdrawn. Thus, for example, when Denmark ratified the Customs Convention on the International Transport of Goods under Cover of TIR Carnets of 14 November 1975, 161/ it declared that the ratification did not extend to the Faeroe Islands. However, subsequently, in 1987, Denmark declared that the Convention would henceforth apply to the Faeroe Islands. 162/

3. Declaration of application in respect of certain Territories only

281. States have also deposited notifications of territorial application in respect only of one Territory, and not to others. Thus, the Netherlands declared that the Convention relating to the Unification of Certain Rules concerning Collisions on Inland Navigation of 15 March 1960 163/ would also apply to Suriname 164/ but was silent as to its application to the Netherlands Antilles. When the United Kingdom acceded, in 1985, to the Convention on a Code of Conduct for Liner Conferences of 6 April 1974, 132/ it declared that the Convention would apply to the United Kingdom, Gibraltar and Hong Kong but was silent as to its other Territories. 165/ By implication, such limited declarations suggest that, conversely, the treaty is not applicable to other Territories.

4. Declaration of territorial application made subsequently to the deposit of the instrument

282. States have also deposited notifications of territorial application subsequent to the deposit of their own instrument. Thus, for example, the Netherlands, which in 1983 had deposited an instrument of accession "for the Kingdom in Europe" to the Convention on a Code of Conduct for Liner Conferences of 6 April 1974, subsequently notified the Secretary-General that the Convention would apply as of 1 January 1986, to Aruba. 165/ The deposit of subsequent notifications of territorial application, of course, implies that the State's

understanding is that, prior to such notification, the treaty was not applicable to the Territories concerned. As concerns the date when the notification takes effect, the Secretary-General has considered that, in the absence of any specific provisions of the treaty, the territorial application takes effect upon the deposit of the notification.

283. Finally, it is to be pointed out that the question of whether a treaty was applied to a Territory has an impact on whether, upon attaining independence, the Territory may "succeed" to the treaty (see chap. XII).

5. Reservations as to the scope of the territorial application

284. When depositing notifications of territorial application, States have occasionally made reservations as to the scope of the application. Thus, for example, when the United Kingdom ratified the International Covenant on Economic, Social and Cultural Rights and extended its application to various Territories, it made the following reservation:

> "The Government of the United Kingdom reserves the right to postpone the application of ... paragraph 2 of article 10 in so far as it concerns paid maternity leave in Bermuda and the Falkland Islands." 166/

285. In all of the above-mentioned circumstances, and as already indicated, the Secretary-General, as depositary, has felt that he was not to pass judgement on the admissibility of such declarations and he has duly circulated them (see annex XXV). This position would not appear inconsistent with the provisions of article 29 of the Vienna Convention on the Law of Treaties since it may be considered that the constant practice of certain States (which still comprise "non-metropolitan" Territories) in respect of territorial application and the general absence of objections to such practices have "established a different intention" within the meaning of article 29.

Chapter XII

SUCCESSIONS TO TREATIES

A. Background, definitions and general principles

1. Background

286. When a non-independent Territory becomes an independent State and accordingly attains the full exercise of external sovereignty, the depositary is faced, as a result of that change, with the problem of the status of the new State as concerns treaties and agreements deposited with him the application of which was extended to the previously non-independent Territory concerned by the State that was at the time responsible for its external relations.

287. At the beginning of the existence of the United Nations the problem of succession arose only with respect to treaties concluded under the auspices of the League of Nations. As time went on, however, an increasing number of United Nations treaties were concluded and were applied or extended to dependent Territories which subsequently became independent States (see chap XI). The United Nations gradually developed the practice described below to determine whether the new States were to be considered as continuing to be bound by treaties applied to their Territories by their predecessors. In the past, "new States" were mostly "non-metropolitan" Territories that had subsequently become independent. However, more recently, a number of new States have come into being as a result of the separation of part of the Territory of another (predecessor) State. It should be noted that the Vienna Convention on Succession of States in respect of Treaties 167/ was adopted on 23 August 1978, and although as at 1 June 1994 it was not yet in force, the Convention in many of its aspects codifies established customary law on the matter.

2. Definitions

288. The terms hereinafter may be defined as follows (see article 2 of the Convention):

- "Succession of States" means the replacement of one State by another in the responsibility for the international relations of the Territory;

- "Predecessor State" means the State that has been replaced by another State on the occurrence of a succession of States;

- "Successor State" means the State that has replaced another State on the occurrence of a succession of States;

- "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the Territory to which the succession of States relates;

- "Newly independent State" means a successor State the Territory of which immediately before the date of the succession of States was a dependent Territory for the international relations of which the predecessor State was responsible;

- "Notification or instrument of succession" means, in relation to a multilateral treaty, any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty.

3. General principles

289. When a Territory, whether it was a non-metropolitan Territory or part of a separated State, becomes an independent State, it "succeeds" to the "predecessor" State, i.e., it becomes responsible for its international relations in lieu of the predecessor State, as of the date when it so replaces the predecessor State; this date is normally the date of independence of the successor State. As concerns treaties, the successor State has then the option of: (a) participating in any treaty which is open to it by signing and depositing an instrument of ratification or taking a similar action in order to become bound by the treaty, or (b) succeeding to any treaty the application of which was extended to it by the predecessor State (thus preserving the continuity of the application of the treaty), by depositing an instrument of succession in respect thereof. It is to be noted that, in accordance with the rules of customary succession, there is no time-limit for the deposit of such instrument of succession.

290. New States may not only succeed to treaties in force that had been applied to them by the predecessor State prior to the succession of States, but they may also invoke, as successor, treaty actions taken on their behalf by the predecessor State (for example, signature of a treaty). Thus a newly independent State may ratify a treaty if it had been signed by the predecessor State intending that the treaty should extend to the Territory that subsequently became independent. Similarly, a newly independent State may, by a notification to that effect, establish its status as a contracting State to a multilateral treaty not yet in force if the predecessor State was itself a contracting State and had indicated that its action also applied to the then Territory.

291. Such successions, however, are possible only when it does not appear from the treaty or otherwise that the participation of the new State would be incompatible with the purpose of the treaty or that it would require the consent of the other parties. In this domain the Secretary-General generally follows the established customary law, as codified by the Vienna Convention on the Succession of States in respect of Treaties.

B. Participation of new States in treaties

292. The general question of the participation of States (including new States) in treaties has been examined in chapter V above (especially in paras. 84-89). As concerns the participation of new States in treaties, on the basis of the prior application of another treaty to the Territory before its independence, the first case in which the Secretary-General, as depositary, was confronted with this question was that of the Protocol of 11 December 1946 26/ amending various agreements, conventions and protocols on narcotic drugs concluded prior to the Second World War. Article V of the Protocol provides that it is "open for signature or acceptance by any of the States Parties to the Agreements, Conventions and Protocols on narcotic drugs" which the Protocol of 11 December 1946 was designed to amend and "to which the Secretary-General of the United Nations has communicated a copy". The Secretary-General had then to decide whether new States that had in the meantime become independent,

e.g., Syria and Lebanon, to which France had extended the application of certain agreements amended by the Protocol, should be invited to become parties to the Protocol. The Secretary-General satisfied himself that the Governments of Syria and Lebanon considered themselves bound by the agreements on narcotic drugs previously applied in their territory and invited them to become parties to the Protocol amending those agreements. Syria and Lebanon became parties to the Protocol of 11 December 1946 by signature without reservation as to approval, on 11 and 13 December 1946 respectively. Syria and Lebanon likewise became parties, by definitive signature to the Protocol of 12 November 1947 to amend the Conventions of 1921 and 1933 for the Suppression of the Traffic in Women and Children, although this Protocol was in principle only open, under its article III, to States parties to those Conventions. 168/

293. This practice became established, albeit with some variations, reflecting the nature of the clauses in the treaties in question relating to the devolution of obligations under multilateral treaties as well as the interpretation placed on those clauses by the parties concerned. Thus, the Hashemite Kingdom of Jordan was invited to become a party to the Protocol of 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs, and to the Protocol of 12 November 1947, to amend the Convention for the Suppression of the Traffic in Women and Children, in view of the fact that some of those agreements had previously been applied in the territory of the Hashemite Kingdom of Jordan.

C. Participation by succession

1. When there are provisions relating to succession in the treaty

294. Some agreements make the exercise of the right of succession subject to restrictive conditions. Thus, the International Cocoa Agreement 1975 66/ provides, in substance, in its article 71, paragraph 4, that notification of succession must be effected within 90 days after the attainment of independence and that it shall take effect as from the date of the Secretary-General's receipt thereof. 169/

295. The provisions of a treaty may even totally rule out succession. Such would be the case if the treaty was open only to the participation of the members of a regional commission which itself would not be open to the new State. In such cases, the situation is clear and the Secretary-General simply abides by the provisions of the treaty.

296. The agreements that have established an intergovernmental organization usually contain express rules concerning admission to that organization. These rules may exclude succession if, for example, participation is limited to a regional area (see also para. 300). They may also simply have the effect of restricting the possibility of succession. Such is the case for the Convention on the International Maritime Consultative Organization 125/ and the Constitution of the World Health Organization, 93/ both of which require that non-members of the United Nations first deposit an application for membership, which must be approved by the organization concerned. In such cases, the Secretary-General, as depositary, first consults the intergovernmental organization concerned to make sure that the membership, by way of succession, of the newly independent State has been duly approved.

2. In the absence of provisions relating to succession

297. In the absence of provisions which set specific conditions for succession or which otherwise restrict succession, the Secretary-General is guided by the participation clauses of the treaties as well as by the general principles governing the participation of States (see chap. V). The independence of the new successor State, which then exercises its sovereignty on its territory, is of course without effect as concerns the treaty rights and obligations of the predecessor State as concerns its own (remaining) territory. Thus, after the separation of parts of the territory of the Union of Soviet Socialist Republics (which became independent States), the Union of Soviet Socialist Republics (as the Russian Federation) continued to exist as a predecessor State, and all its treaty rights and obligations continued in force in respect of its territory. 170/ The same applies to the Federal Republic of Yugoslavia (Serbia and Montenegro), which remains as the predecessor State upon separation of parts of the territory of the former Yugoslavia. General Assembly resolution 47/1 of 22 September 1992, to the effect that the Federal Republic of Yugoslavia could not automatically continue the membership of the former Yugoslavia in the United Nations (see para. 89 above), was adopted within the framework of the United Nations and the context of the Charter of the United Nations, and not as an indication that the Federal Republic of Yugoslavia was not to be considered a predecessor State.

298. A different situation occurs when the predecessor State disappears. Such was the case when the Czech Republic and Slovakia were formed upon separation of their territories from Czechoslovakia, which ceased to exist. Each of the new States is then in the position of a succeeding State.

299. The Secretary-General accepts instruments of succession by "new States" on the following two conditions: (a) that the treaty was applied to, or the treaty action taken on behalf of, the territory of the new State by the predecessor State prior to the succession of States; and (b) that the territory has been recognized as a State, within the Vienna formula and the practice of the General Assembly (see paras. 79-88 above).

300. The question of whether the treaty had been applied to a Non-Self-Governing Territory before independence raises no difficulty if the treaty had been expressly extended to the Territory by the predecessor State. However, this is not always so (see para. 273). When the treaty was not expressly extended to the Territory, the Secretary-General accepts instruments of succession if the predecessor State was a party to the treaty, if it had not formally excluded the application of the treaty to the Territory and if the succeeding State declares that the treaty was indeed applied in the Territory. If under the provisions of the treaty the participation in the treaty was limited in scope - if, for example, it was only open to States falling within the geographical scope of a regional commission in which the new State could not become a member - the Secretary-General would call the attention of the new State concerned to the apparent inconsistency. As concerns the recognition of the entity as a State, when instruments of succession were transmitted to the Secretary-General by entities which had separated from a predecessor State but which were not yet Members of the United Nations or of a specialized agency, and had not been unequivocally recognized as States, inter alia, by the General Assembly, the Secretary-General indicated to those entities that only after they had been recognized as States could he accept their instruments for deposit.

301. When the instrument is accepted in deposit, the Secretary-General circulates a corresponding depositary notification (see annex XXVI).

3. Reservations withdrawn or made upon succession

302. In extending the application of a treaty to a Territory, the State responsible for that Territory's international relations may have made reservations (see para. 284). When depositing an instrument of succession, a new State finds itself in the position of a State that would deposit an instrument of ratification or of a similar nature. At the time of deposit the succeeding State may, therefore, make any reservations that would be allowed by the treaty, in the same manner as any new participant. It may also withdraw any reservations made by the predecessor State (see annex XXVII).

D. "General" declarations of succession

303. Frequently, newly independent States will submit to the Secretary-General "general" declarations of succession, usually requesting that the declaration be circulated to all States Members of the United Nations. The Secretary-General duly complies with such a request (see annex XXVIII) but does not consider such a declaration as a valid instrument of succession to any of the treaties deposited with him, and he so informs the Government of the new State concerned. 171/ In so doing, the Secretary-General is guided by the following considerations.

304. The deposit of an instrument of succession results in having the succeeding State become bound, in its own name, by the treaty to which the succession applies, with exactly the same rights and obligations as if that State had ratified or acceded to, or otherwise accepted, the treaty. Consequently, it has always been the position of the Secretary-General, in his capacity as depositary, to record a succeeding State as a party to a given treaty solely on the basis of a formal document similar to instruments of ratification, accession, etc., that is, a notification emanating from the Head of State, the Head of Government or the Minister for Foreign Affairs, which should specify the treaty or treaties by which the State concerned recognizes itself to be bound.

305. General declarations are not sufficiently authoritative to have the States concerned listed as parties in the publication Multilateral Treaties Deposited with the Secretary-General (see annex XXVIII). In essence, those declarations usually indicate that a review of the treaties applied to the territory of the State before accession to independence is in progress and that the State concerned would specify in due course which treaties should continue to be considered as binding and which should be considered as having lapsed. Those declarations also mention that pending completion of the review, it should be "presumed" (sometimes, "legally presumed") that each treaty had been succeeded to by the State concerned, and that action should be based on that presumption. However, such a presumption, while it could possibly be used by other States as a basis for practical action, can certainly not be taken as a formal and unambiguous acknowledgement of the obligations contained in a given treaty, since it can be unilaterally reversed at any time in respect of any treaty. Finally, it should be emphasized that such "general declarations" are not addressed to the Secretary-General in his capacity as depositary of multilateral treaties, but rather for the purpose of circulation to States Members of the United Nations and of the specialized agencies.

306. In connection with the above, it is to be noted that, in fact, formal instruments of succession to specifically identified treaties are routinely deposited with the Secretary-General by States that have previously deposited a "general declaration of succession", thus avoiding any uncertainty arising under

a different practice. And it is only when such instruments are deposited with the Secretary-General that the State concerned is henceforth officially listed in the records of the treaty as a party thereto. It should be emphasized, however, that the position of the Secretary-General, as depositary, is absolutely not binding on States, which may draw from the general declaration of succession any legal consequences which they may deem fit.

307. Other depositaries have in fact taken the opposite view of that of the Secretary-General and have considered that such general declarations of succession resulted in having the State concerned become bound to all treaties deposited with them. Those depositaries have accordingly listed those States among the parties. However, as experience has shown, a number of such States have subsequently informed the depositary concerned that upon further review they would not succeed to a given treaty and that the treaty should accordingly be considered as having lapsed as of the day of independence. Such communications were sometimes circulated years after the depositary had listed the State concerned as a party; the depositary then had to cancel the "deposit" of the instrument of succession in respect of the State and the treaty concerned.

E. Devolution agreements

308. At the time of independence, the successor and the predecessor States sometimes conclude a "devolution agreement" which regulates the inheritance by the successor State of treaty rights and obligations that may exist by virtue of the previous application of treaties to the Territory by the predecessor State. Such devolution agreements are optional, however, and their absence does not restrict the capacity of the succeeding State, which is based on the principles of self-determination and of sovereign equality of States.

309. The considerations described in paragraphs 303 to 307 above in respect of general declarations of succession also apply to such devolution agreements concluded between new States and the States formerly responsible for their international relations. Here again, the usually very general wording does not allow for a formal action to be taken by the Secretary-General as the depositary of an individual treaty. For example, in the exchange of letters of 20 June 1966 between the United Kingdom and The Gambia: "... it is the understanding of the [two Governments] that the Government of The Gambia are in agreement (i) that all obligations and responsibilities of the Government of the United Kingdom which arose from any valid instrument applying to The Gambia immediately before the 18th of February, 1965, continued to apply to The Gambia and were assumed by the Government of The Gambia as from that date ...".

310. It should further be stressed that participation in a multilateral treaty is normally the result of procedures specifically provided for by the treaty and effected with the parties to that treaty or with the depositary appointed by them. A change in participation entails a change in the obligations and rights of all parties to the treaty, and it cannot therefore result from the provisions of another treaty, by virtue of the rule pacta tertiis nec nocent nec prosunt, which has been codified as article 34 of the Vienna Convention on the Law of Treaties. However, if the devolution agreements unambiguously provide that the successor State shall henceforth assume all obligations and enjoy all rights which would exist by virtue of the application of treaties, the Secretary-General, if he were to receive such a devolution agreement, would treat such an agreement as an instrument of succession, but only if the treaties concerned were clearly and specifically identified.

Chapter XIII

DEPOSITARY NOTIFICATIONS BY THE SECRETARY-GENERAL

311. Among the duties of the depositary are that of informing all interested parties, by way of depositary notifications, of any action relating to the treaties deposited with him. Such actions as described above, will include:

(a) Opening of a treaty for signature;

(b) Signature of a treaty with - as the case requires - reservations or declarations;

(c) Deposit of binding instruments, whatever their designation, with - as the case requires - reservations or declarations;

(d) Objections, withdrawal of objections, termination;

(e) Territorial applications, successions;

(f) Any other action which in the opinion of the Secretary-General should be made known to the States parties.

312. These notifications, however, relate exclusively to the Secretary-General's functions as depositary; any other communications concerning agreements which the Secretary-General, as central authority, may find it necessary to circulate for the information of Member States are circulated by him as Chief Administrative Officer of the United Nations, and not as depositary. This difference is reflected in the form of the communications.

313. All notifications concerning the Secretary-General's functions as depositary carry the following heading:

(XII.7)

UNITED NATIONS - NATIONS UNIES

Reference: C.N.270.1987.TREATIES-7 (Depositary Notification)

UNITED NATIONS CONVENTION ON CONDITIONS FOR REGISTRATION OF SHIPS CONCLUDED AT GENEVA ON 7 FEBRUARY 1986

RATIFICATION BY COTE D'IVOIRE

The title of the treaty concerned and the date of its conclusion appear in the centre, and under it the description of the action which is the subject of the notification (here, "Ratification by Côte d'Ivoire"). The figure on the top right corner (here, XII.7) refers to the chapter in the publication Multilateral Treaties Deposited with the Secretary-General (ST/LEG/SER.E/-) corresponding to the treaty concerned. On the top left, the reference (here, C.N.270.1987.TREATIES-7) indicates that the depositary notification is the 270th circular note of the year 1987, and the number after TREATIES (here, 7) indicates that this depositary notification is the seventh made in 1987 in

respect of the treaty in question. This allows the States concerned to verify that they are not missing any depositary notification in respect of a specific treaty.

314. In the past, the circulars were in the form of letters and were signed by the Legal Counsel on behalf of the Secretary-General. Owing to the increasing depositary workload, the circulars are now in the form of notes verbales and are initialled by the Chief of the Treaty Section of the Office of Legal Affairs (see annex XIII).

315. When the Secretary-General transmits information which does not directly relate to his functions as depositary, for example, when he circulates "general declarations" (which do not constitute treaty actions per se) (see para. 302), the corresponding circular note does not bear the symbol "C.N.TREATIES", but rather the symbol LA/41/TR, which is the reference to general legal questions on treaty matters. In a similar fashion, when non-depositary information concerning treaties (see paras. 31 and 32) is circulated by other units of the Secretariat on behalf of the Secretary-General, as Chief Administrative Officer, they bear the symbols proper to those units.

316. Circular notes are an essential feature of the Secretary-General's depositary functions. The information they contain is reproduced in substance in the Secretariat's yearly publication Multilateral Treaties Deposited with the Secretary-General (ST/LEG/SER.E/-).

Notes

1/ United Nations publication, Sales No. 1955.V.2 (vol. V).

2/ See Repertory of Practice of United Nations Organs, vol. V (United Nations publication, Sales No. 86.V.7), article 102, para. 29.

3/ United Nations, Treaty Series, vol. 1155, p. 331.

4/ United Nations Juridical Yearbook, 1986 (United Nations publication, Sales No. E.94.V.2), p. 218.

5/ Ibid., 1975 (United Nations publication, Sales No. E.77.V.3), p. 87.

6/ See, for example, the comments in Yearbook of the International Law Commission, 1962, vol. I (United Nations publication, Sales No. 62.V.4), 657th meeting, para. 87.

7/ United Nations, Treaty Series, vol. 729, p. 161.

8/ Ibid., vol. 33, p. 261.

9/ See Multilateral Treaties Deposited with the Secretary-General (United Nations publication, Sales No. E.95.V.5), chap. III.2, Nepal, note 10.

10/ United Nations, Treaty Series, vol. 866, p. 67.

11/ See document TD/Nickel/12.

12/ See United Nations Juridical Yearbook, 1974 (United Nations publication, Sales No. E.76.V.1), p. 190.

13/ See ibid., 1984 (United Nations publication, Sales No. E.91.V.1), p. 181.

14/ United Nations, Treaty Series, vol. 595, p. 287.

15/ See annex to depositary notification C.N.86.1992.TREATIES-2.

16/ United Nations, Treaty Series, vol. 1035, p. 167.

17/ Ibid., vol. 189, p. 137.

18/ Ibid., vol. 1023, p. 15.

19/ Ibid., vol. 1015, p. 243.

20/ Official Records of the Third United Nations Convention on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

21/ See, for example, General Assembly resolution 37/99 I.

22/ See ENMOD/CONF.II/1.

23/ See, for example, Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 45 (A/39/45), vol. II, annex III, for the opinions given as concerns reservations made in respect of the Convention on the Elimination of All Forms of Discrimination against Women.

24/ See, for example, document CEDAW/SP/13/Rev.1.

25/ United Nations, Treaty Series, vol. 1249, p. 13.

26/ Ibid., vol. 12, p. 179.

27/ Ibid., vol. 999, p. 171.

28/ Ibid., vol. 1042, p. 17.

29/ Ibid., vol. 1201, p. 191.

30/ Ibid., vol. 1, p. 15.

31/ Ibid., vol. 96, p. 271.

32/ Ibid., vol. 1445, No. 24591.

33/ See document TD/Sugar/10/11.

34/ See document TD/Timber/11.

35/ See A/CONF.63/15.

36/ United Nations, Treaty Series, vol. 976, p. 3.

37/ See A/CONF.97/18.

38/ See Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), p. 27.

39/ Ibid., Twenty-first Session, Supplement No. 9 (A/6309/Rev.1), p. 100.

40/ United Nations, Treaty Series, vol. 335, p. 211.

41/ See Yearbook of the International Law Commission, 1962, vol. I (United Nations publication, Sales No. 62.V.4), 662nd meeting, para. 8.

42/ United Nations, Treaty Series, vol. 71, p. 101.

43/ See document TD/Rubber.2/EX/R.1/Add.7.

44/ United Nations, Treaty Series, vol. 78, p. 277.

45/ Ibid., vol. 119, p. 99.

46/ For the determination of whether the Trust Territory of the Pacific Islands was entitled to sign the Convention, see United Nations Juridical Yearbook, 1982 (United Nations publication, Sales No. E.89.V.1), p. 186.

47/ For the list of the signatories of the Final Act, see Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XXI.6, note 2.

48/ See General Assembly resolution 1017 A and B (XI) and Repertory of Practice of United Nations Organs, Supplement No. 2, vol. I (United Nations publication, Sales No. 64.V.5), art. 4, para. 7.

49/ See, inter alia, the statement of the Secretary-General at the 258th plenary meeting of the General Assembly, at the eighteenth session, on 18 November 1963 (Official Records of the General Assembly, Eighteenth Session, 258th plenary meeting); and the statement by the Secretary-General at the 918th meeting of the Sixth Committee, on 25 October 1966 (ibid., Sixth Committee, 918th meeting).

50/ 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.

51/ For the specific question of their possible succession to treaties, see chapter X. For a review of cases with which the Secretary-General was confronted at the inception of the United Nations, see the 1959 summary of practice (ST/LEG/7), para. 108 et. seq.

52/ See United Nations Juridical Yearbook, 1979 (United Nations publication, Sales No. E.82.V.1), p. 172.

53/ See the Constitution of the World Health Organization, United Nations, Treaty Series, vol. 15, p. 185.

54/ United Nations, Treaty Series, vol. 754, p. 73.

55/ A/7566.

56/ United Nations, Treaty Series, vol. 399, p. 189.

57/ Ibid., vol. 569, p. 272.

58/ Ibid., vol. 385, p. 137.

59/ See United Nations Juridical Yearbook, 1964 (United Nations publication, Sales No. 66.V.4), p. 245.

60/ See General Assembly resolutions 1747 (XVI) of 28 June 1962, 1760 (XVII) of 31 October 1962, and 1883 (XVIII) of 14 October 1963.

61/ For the Charter of the Centre see United Nations, Treaty Series, vol. 1321, p. 203.

62/ United Nations, Treaty Series, vol. 1129, p. 3.

63/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XXV.2, note 2.

64/ United Nations, Treaty Series, vol. 1024, p. 3.

65/ Ibid., vol. 1102, p. 27.

66/ Ibid., vol. 1023, p. 253.

67/ Ibid., vol. 1259, p. 3.

68/ Ibid., vol. 647, p. 3.

69/ See United Nations Juridical Yearbook, 1975 (United Nations publication, Sales No. 77.V.3), p. 202.

70/ See document ID.WG.397/8.

71/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. VI.16, note 10.

72/ United Nations, Treaty Series, vol. 1316, p. 205.

73/ Ibid., vol. 1079, p. 89.

74/ League of Nations, Treaty Series, vol. IX, p. 223.

75/ Ibid., vol. XXI, p. 231.

76/ For more extensive developments on this question, see United Nations Juridical Yearbook, 1975 (United Nations publication, Sales No. 77.V.3), p. 196 and ibid., 1964 (United Nations publication, Sales No. 66.V.4), pp. 241 and 243.

77/ See "twenty-first list" of the League of Nations, Official Journal, Special Supplement, No. 193, p. 120.

78/ United Nations, Treaty Series, vol. 1342, p. 137.

79/ Ibid., vol. 336, p. 177.

80/ However, under article 36 (6) such Governments could not, until they had ratified the Agreement or acceded to it, take part, as voting members, in the work of the Council.

81/ United Nations, Treaty Series, vol. 266, p. 3.

82/ See United Nations Juridical Yearbook, 1971 (United Nations publication, Sales No. E.73.V.1), p. 227.

83/ United Nations, Treaty Series, vol. 268, p. 3.

84/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. I.4.

85/ For examples of such declarations, see Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. IV.4 and IV.9.

86/ General Assembly resolution 39/46.

87/ United Nations, Treaty Series, vol. 319, p. 21.

88/ Ibid., vol. 516, p. 205.

89/ Ibid., vol. 559, p. 285.

90/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XXI.1, note 5.

91/ United Nations, Treaty Series, vol. 781, p. 322, and vol. 854, pp. 214 and 220.

92/ Ibid., vol. 1245, p. 221.

93/ Ibid., vol. 14, p. 185.

94/ Ibid., vol. 62, p. 30.

95/ See A/1372.

96/ See A/1494, para. 3.

97/ Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), p. 2.

98/ Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. IV.9, note 11.

99/ Ibid., chap. IV.8 and IV.11.

100/ See United Nations Juridical Yearbook, 1975 (United Nations publication, Sales No. E.77.V.3), p. 205.

101/ United Nations, Treaty Series, vol. 450, p. 81.

102/ See paragraph 4 (b) of article 20 of the Vienna Convention on the Law of Treaties (see note 2 above), to which due consideration is given by the Secretary-General.

103/ United Nations, Treaty Series, vol. 993, p. 143.

104/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XI.B.11, declarations by Belgium and other EEC members, and note 7.

105/ United Nations, Treaty Series, vol. 1019, p. 175.

106/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. VI.16, notes 16, 17 and 19.

107/ United Nations, Treaty Series, vol. 606, p. 267.

108/ Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XXI.6, Declaration of Philippines.

109/ Ibid., Objections.

110/ Ibid., Objections, note 10.

111/ See Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209), chap. II, para. (25) of commentary to article 20, p. 24.

112/ United Nations, Treaty Series, vol. 1276, p. 3.

113/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. X.2, reservations by Germany and United Kingdom and notes 2, 5 and 7; and chap. XXV.3, reservation by France, and note 3.

114/ See United Nations Juridical Yearbook, 1976 (United Nations publication, Sales No. E.78.V.5), p. 209.

115/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XXII.1, note 11.

116/ United Nations, Treaty Series, vol. 880, p. 115.

117/ See the relevant footnote (under Germany) in chap. III.1 and 3 and chap. XXVI.1 of Multilateral Treaties Deposited with the Secretary-General, op. cit.

118/ UNEP/WG.190/4.

119/ United Nations, Treaty Series, vol. 1108, p. 151.

120/ See Official Records of the General Assembly, Thirty-first Session, Supplement No. 27 (A/31/27), vol. I, annex I.

121/ United Nations, Treaty Series, vol. 45, p. 149.

122/ Ibid., vol. 818, p. 89.

123/ Ibid., vol. 193, p. 135.

124/ See documents EB.AIR/AC.1/4, annex, and EB.AIR/CRP.1/Add.4.

125/ United Nations, Treaty Series, vol. 289, p. 3.

126/ International Legal Materials, vol. XXVI, p. 1541.

127/ United Nations, Treaty Series, vol. 1401, p. 3.

128/ See document C.27.M.16.1931.V.

129/ United Nations, Treaty Series, vol. 55, p. 308.

130/ Ibid., vol. 1282, p. 205.

131/ Ibid., vol. 197, p. 3.

132/ Ibid., vol. 1334, p. 15.

133/ See paragraph 23 above for a discussion of the question of the depositary of the instruments of ratification of amendments to the Charter.

134/ United Nations, Treaty Series, vol. 712, p. 217.

135/ For amendments to the Agreement establishing the Caribbean Development Bank, see United Nations, Treaty Series, vol. 1021, p. 437 (addendum).

136/ United Nations, Treaty Series, vol. 660, p. 15.

137/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. IV.2 (a) and IV.9 (a).

138/ United Nations, Treaty Series, vol. 1014, p. 43.

139/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XIX.13.

140/ United Nations, Treaty Series, vol. 882, p. 67.

141/ Ibid., vol. 520, p. 151.

142/ General Assembly resolution 1514 (XV).

143/ United Nations, Treaty Series, vol. 268, p. 3.

144/ Ibid., vol. 456, p. 3.

145/ Ibid., vol. 30, p. 3.

146/ De Martens, Nouveau recueil général des traités, 3ème Série, tome VII, p. 266.

147/ United Nations, Treaty Series, vol. 20, p. 229.

148/ League of Nations, Treaty Series, vol. CX, p. 171.

149/ Ibid., vol. IX, p. 145.

150/ Ibid., vol. CL, p. 431.

151/ Ibid., vol. XXVII, p. 213.

152/ See A/412.

153/ See Official Records of the General Assembly, Second Session, Plenary meetings, Verbatim records, vol. 1, p. 355; and General Assembly resolution 126 (II).

154/ League of Nations, Treaty Series, vol. I, p. 83.

155/ Clive Parry, Consolidated Treaty Series, vol. 211, pp. 45 and 54.

156/ See Official Records of the General Assembly, Third Session, part I, Sixth Committee, Summary records, 111th meeting, p. 509.

157/ See General Assembly resolution 256 (III).

158/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. X.10.

159/ United Nations, Treaty Series, vol. 988, p. 43.

160/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XI.A.15.

161/ United Nations, Treaty Series, vol. 1079, p. 1142.

162/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XI.A.16.

163/ United Nations, Treaty Series, vol. 572, p. 113.

164/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XII.3.

165/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. XII.6.

166/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. IV.3.

167/ United Nations Juridical Yearbook, 1978 (United Nations publication, Sales No. E.80.V.1), p. 106.

168/ See the 1959 summary of practice (ST/LEG/7), para. 108 ff.

169/ United Nations Juridical Yearbook, 1975 (United Nations publication, Sales No. E.77.V.3), p. 201.

170/ See Multilateral Treaties Deposited with the Secretary-General, op. cit., chap. I.2, notes 12 and 16.

171/ See Yearbook of the International Law Commission, 1962, vol. II (United Nations publication, Sales No. 62.V.5), chap. II, p. 110.

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Annex II

Text of article 77 of the Vienna Convention on the Law of Treaties

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.

Annex III

Example of depositary notification pursuant to the adoption of amendments by a review conference

(IV.9)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

C.N.289.1992.TREATIES-7 (Depositary Notification)

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 10 DECEMBER 1984

ADOPTION OF THE AMENDMENTS PROPOSED BY AUSTRALIA

SUBMISSION OF THE SAID ADOPTED AMENDMENTS FOR ACCEPTANCE

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

I

It is recalled that, by depositary notification C.N.10.1992. TREATIES-1 dated 28 February 1992, the Secretary-General communicated to the States Parties the text of amendments proposed by Australia to article 17, paragraph 7, and article 18, paragraph 5, to the Convention, with a request that they notify him within four months whether they favoured a conference of States Parties for the purpose of considering and voting upon the proposal.

By the end of the said four-month period, i.e. by 28 June 1992, at least one third of the State Parties had notified the Secretary-General that they favoured such a conference.

Consequently, in pursuance of article 29, paragraph 1, of the Convention, the Secretary-General convened the conference, i.e. on 8 September 1992, at which the proposed amendments were adopted by a majority of the States present and voting.

II

In accordance with the said article 29, paragraph 1, the adopted amendments are submitted under cover of this notification to all the States Parties for acceptance. In accordance with article 29, paragraph 2, if accepted, the amendments will enter into force when two thirds of the States Parties to the Convention have notified the Secretary-General that they have accepted them in accordance with their respective constitutional processes.

30 November 1992

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex IV

Example of depositary notification pursuant to the establishment by the Secretary-General of an authentic text and its adoption under the 90 days' procedure

(X.7 (b))

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

C.N.470.1992.TREATIES-5 (Depositary Notification)

CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS CONCLUDED AT NEW YORK ON 14 JUNE 1974, AS AMENDED BY THE PROTOCOL OF 11 APRIL 1980

ADOPTION OF THE AUTHENTIC ARABIC TEXT OF THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

By depositary notification C.N.120.1992.TREATIES-2 of 11 August 1992, the Secretary-General circulated a proposal for the adoption of the authentic Arabic text of the above-mentioned Convention, in accordance with the request by the United Nations Commission on International Trade Law.

Within a period of 90 days from the date of the said depositary notification, no objection to the proposed adoption had been notified by any of the signatory or contracting States. Consequently, on 9 November 1992, the Secretary-General has considered that the Arabic text was adopted with the same status as that of the other authentic texts referred to in the testimonium of the Convention, and has therefore caused it to be inserted in the original thereof together with a new multilingual title page, in which the Arabic title has been included.

A copy of the corresponding Procès-verbal of rectification, which also applies to the certified true copies of the Convention, as amended, established on 12 February 1992 (depositary notification C.N.106.1991.TREATIES-2 of 29 February 1992), is enclosed.

2 June 1993

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex V

Example of depositary notification pursuant to the establishment by the Secretary-General of a convention amended by a subsequent protocol

(VI.18)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.10.1976.TREATIES-1

26 January 1976

SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, AS AMENDED BY THE PROTOCOL AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, DONE AT GENEVA ON 25 MARCH 1972

TRANSMISSION OF CERTIFIED TRUE COPIES OF TEXT ESTABLISHED BY THE SECRETARY-GENERAL

Sir,

I have the honour, upon instructions from the Secretary-General, ... to transmit herewith, in accordance with article 22 of the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on 25 March 1972, two certified true copies of the text of the Single Convention as amended by the Protocol. The text was established on 8 August 1975 by the Secretary-General.

Accept, Sir, the assurances of my highest consideration.

Blaine Sloan
Director of the General Legal Division,
in charge of the Office of Legal Affairs

Annex VI

Example of depositary notification transmitting proposed corrections to the original text of a treaty under the 90 days' procedure

(XXVII.3)

UNITED NATIONS NATIONS UNIES

C.N.1.1994.TREATIES-1 (Depositary Notification)

BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL CONCLUDED AT BASEL ON 22 MARCH 1989

PROPOSED CORRECTIONS OF THE ORIGINAL OF THE CONVENTION (ARABIC, CHINESE, ENGLISH AND SPANISH) AND OF THE CERTIFIED TRUE COPIES

The Secretary-General of the United Nations, acting in his capacity as depositary and with reference to depositary notification C.N.156.1989.TREATIES-2 of 24 July 1989, communicates the following:

It has come to the attention of the Secretary-General that there is a lack of concordance between the original Arabic, Chinese, English and Spanish texts and the correct other language versions of article 17 (5) of the Convention and also in the certified true copies thereof established on 7 July 1989.

The text of said article 17 (5) as it should read is annexed to this notification.

In accordance with established practice, and unless there is an objection from interested Parties, the Secretary-General proposes therefore to effect in the Arabic, Chinese, English and Spanish texts of the original of the Convention the required corrections, which would also apply to the certified true copies.

Under the said practice, objections should be communicated to the Secretary-General within 90 days from the date of the present communication, i.e. not later than 16 May 1994.

15 February 1994

SJ

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex VII

Procès-verbal concerning the rectification of the text of a treaty

UNITED NATIONS NATIONS UNIES

BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL CONCLUDED AT BASEL ON 22 MARCH 1989

CONVENTION DE BALE SUR LE CONTROLE DES MOUVEMENTS TRANSFRONTIERES DE DECHETS ET DE LEUR ELIMINATION CONCLUE A BALE LE 22 MARS 1989

PROCES-VERBAL OF RECTIFICATION OF THE ORIGINAL OF THE CONVENTION

PROCES-VERBAL DE RECTIFICATION DE L'ORIGINAL DE LA CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, concluded at Basel on 22 March 1989,

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention de Bâle sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination, conclue à Bâle le 22 mars 1989,

WHEREAS it appears that in the original of the Convention there is a lack of concordance between the original Arabic, Chinese, English and Spanish texts and the correct other language versions of article 17 (5) of the Convention,

CONSIDERANT que dans l'original de la Convention apparaît un défaut de concordance entre la version originale des textes anglais, arabe, chinois et espagnol et les autres versions linguistiques correctes du paragraphe 5 de l'article 17 de la Convention,

WHEREAS the corresponding proposed corrections were communicated to all States concerned by depositary notification C.N.1.1994.TREATIES-1 of 15 February 1994,

CONSIDERANT que la proposition de corrections correspondantes a été communiquée à tous les Etats intéressés par notification dépositaire C.N.1.1994.TREATIES-1 du 15 février 1994,

WHEREAS at the end of a period of 90 days from the date of that communication, no objection had been notified,

CONSIDERANT que dans le délai de 90 jours à compter de la date de cette communication, aucune objection n'a été notifiée,

HAS CAUSED the corrections indicated in the annex to this Procès-verbal to be effected in the original of the Convention (Arabic, Chinese, English and Spanish texts), which rectifications also apply to the certified true copies of the Convention established on 7 July 1989.

A FAIT PROCEDER dans l'original de la Convention (textes anglais, arabe, chinois et espagnol) auxdites corrections telles qu'indiquées en annexe au présent procès-verbal, lesquelles s'appliquent également aux exemplaires certifiés conformes de la Convention établis le 7 juillet 1994.

IN WITNESS WHEREOF, I, Hans Corell, Under-Secretary-General, the Legal Counsel, have signed this Procès-verbal at the Headquarters of the United Nations, New York, on 16 May 1994.

EN FOI DE QUOI, Nous, Hans Corell, Secrétaire général adjoint, Conseiller juridique, avons signé le présent procès-verbal au Siège de l'Organisation des Nations Unies, à New York, le 16 mai 1994.

Hans Corell

Annex VIII

Example of depositary notification concerning the correction of Regulations annexed to the Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts

(XI.B.16)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.453.1993.TREATIES-52 (Depositary Notification)

AGREEMENT CONCERNING THE ADOPTION OF UNIFORM CONDITIONS OF APPROVAL AND RECIPROCAL RECOGNITION OF APPROVAL FOR MOTOR VEHICLE EQUIPMENT AND PARTS DONE AT GENEVA ON 20 MARCH 1958

MODIFICATIONS TO REGULATION NO. 48 ANNEXED TO THE AGREEMENT

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

At its hundredth session, the Working Party on the Construction of Vehicles, Principal Working Party on Road Transport, of the Inland Transport Committee of the Economic Commission for Europe, adopted certain drafting modifications to the English and French texts of Regulation No. 48.

..... Herewith is a copy of the corresponding procès-verbal, together with the text of the modifications concerned.

9 February 1994

SJ

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex IX

Model of certification of the copies of a treaty

I hereby certify that the foregoing text is a true copy of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, adopted by the General Assembly of the United Nations on 18 December 1990, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille, adoptée par l'Assemblée générale de l'Organisation des Nations Unies le 18 décembre 1990, dont l'original se trouve déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

For the Secretary-General,
The Legal Counsel:

Pour le Secrétaire général,
Le Conseiller juridique :

Carl-August Fleischhauer

United Nations, New York
22 March 1991

Organisation des Nations Unies
New York, le 22 mars 1991

Annex X

Example of depositary notification by which certified copies are transmitted to the States and organizations concerned

(X.12)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS: ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.79.1989.TREATIES-1 (Depositary Notification)

CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1988

CERTIFIED TRUE COPIES OF THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, and in reference to depositary notification C.N.241.1988.TREATIES-1 of 9 January 1989, has the honour to ..... transmit herewith two certified true copies of the said Convention.

The Secretary-General takes this opportunity to call the attention of the competent authorities to the fact that certified true copies are established specifically for the purpose of enabling the Governments and Organizations concerned to complete the internal procedures of ratification, acceptance, approval or accession. For budgetary reasons, certified true copies are printed in limited numbers, and it is expected that any additional copies that may be required could be reproduced by the authorities concerned themselves on the basis of the two copies accompanying the present communication.

28 April 1989

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XI

Example of full powers

Full Powers

His Excellency Mr./Mrs. [full name and title] is hereby granted full powers to sign, in the name of the Government of [State] [subject to ratification] */ [without reservation as to ratification] */ the [title of the treaty] adopted/concluded on [date] at [place].

In witness thereof, I have signed these presents.

Given at [place] on [date]
Signed [Head of State or Government, or Minister for Foreign Affairs]

---

*/ One of these alternatives is to be chosen, subject of course to the provisions of the treaty. Almost always and in accordance with the provisions of most treaties, full powers are granted subject to ratification.

Annex XII

Example of general full powers

General Full Powers

His Excellency Mr./Mrs. [full name and title] is hereby granted full powers to sign, in the name of the Government of [name of the State] [subject to ratification] */ without reservation as to ratification] */ all treaties, conventions, agreements, protocols and other instruments deposited with the Secretary-General of the United Nations and notifications related thereto.

In witness whereof, I have signed these presents.

Given at [place] on [date]
Signed [Head of State or Government, or Minister for Foreign Affairs]

---

*/ One of these alternatives is to be chosen, subject of course to the provisions of the treaty. Almost always, and in accordance with the provisions of most treaties, full powers are granted subject to ratification.

Annex XIII

Example of depositary notification pursuant to the signature of a treaty (with reservations and declarations)

(IV.8)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.162.1983.TREATIES-5 (Depositary Notification)

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 18 DECEMBER 1979

SIGNATURE BY THE REPUBLIC OF KOREA

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 25 May 1983, the above-mentioned Convention was signed on behalf of the Government of the Republic of Korea.

Upon signature, the Government of the Republic of Korea made the following reservation and declarations:

(Original) (English)

"1. The Government of the Republic of Korea does not consider itself bound by the provisions of article 9 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979

2. Bearing in mind the fundamental principles as embodied in the said Convention, the Government of the Republic of Korea has recently established the Korea Women's Development Institute with a view to promoting women's welfare and social activities. A committee under the chairmanship of the prime minister will shortly be set up to consider and coordinate overall policies on women.

3. The Government of the Republic of Korea will make continued efforts to take further measures in line with the provisions stipulated in the Convention."

9 June 1983

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XIV

Example of depositary notification concerning the opening for signature of a treaty

UNITED NATIONS NATIONS UNIES (XIX.39)

POSTAL ADDRESS-ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS-ADRESSE TELEGRAPHIQUE UNATIONS NEW YORK

REFERENCE C.N.14.1994.TREATIES-1 (Depositary Notification)

INTERNATIONAL TROPICAL TIMBER AGREEMENT, 1994
CONCLUDED AT GENEVA ON 26 JANUARY 1994

OPENING FOR SIGNATURE

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above-mentioned Agreement was adopted on 26 January 1994 at Geneva by the United Nations Conference on Tropical Timber, 1993. It is the successor agreement to the International Tropical Timber Agreement, 1983, which is to expire on 31 March 1994.

It will be opened for signature at United Nations Headquarters, from 1 April 1994 until one month after the date of its entry into force, by Governments invited to the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1983, in accordance with article 38 (1).

Certified true copies of the Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, are being prepared and will be transmitted as soon as possible to States and organizations concerned.

24 March 1994

SJ

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XV

Example of confirmation of the competence of an official other than the Head of State or Government or the Minister for Foreign Affairs to bind his State

Notification

In order to comply with the international practice that the Secretary-General feels obliged to follow as depositary of multilateral treaties, as well as the provisions of article 7 (2) of the Vienna Convention on the Law of Treaties;

NOW THEREFORE the Government of [State] do hereby confirm to the Secretary-General of the United Nations that under the practice of [State] the Minister for Foreign Trade is considered representing [State] for the purpose of signing the Convention in question and is dispensed with full power.

IN WITNESS THEREOF I, [name], Minister for Foreign Affairs, have signed this Notification and fixed hereto my official seal;

MADE at the Ministry for Foreign Affairs,

at [place], this [date].

Annex XVI

Examples of binding instruments*

Instruments of ratification

I, [name] [title (Head of State or Government, or Minister for Foreign Affairs] declare that the Government of [name of State] having previously signed the [full title of the treaty] adopted on [date], having considered the said [treaty/convention] now declare that the Government of [name of State] hereby ratifies the same and undertakes to perform and carry out faithfully all the stipulations therein contained.

In witness whereof, I have signed the present instrument.

Done at [place] on [date]
Signature

Instrument of accession

I, [name] [title (Head of State or Government, or Minister for Foreign Affairs] declare that the Government of [name of State] having considered the [full title of the treaty] adopted on [date], declare that the Government of [name of State] hereby accedes to the said [treaty/convention] and undertakes to perform and carry out faithfully all the stipulations therein contained.

In witness whereof, I have signed the present instrument.

Done at [place] on [date]
Signature

Given at [place] on [date]
Signed [Head of State or Government, or Minister for Foreign Affairs]

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* It is recalled that parties may adopt any format they see fit for such instruments, provided that these instruments conform as to substance to established international law in this regard.

Annex XVII

Example of notice in the Journal of the United Nations

JOURNAL

of the UNITED NATIONS — des NATIONS UNIES

THURSDAY, 21 JULY 1994 — No. 1994/139 — JEUDI 21 JUILLET 1994

PROGRAMME OF MEETINGS AND AGENDA

PROGRAMME ET ORDRE DU JOUR DES SEANCES ET DES REUNIONS

SCHEDULED MEETINGS

SEANCES PREVUES AU CALENDRIER DES CONFERENCES

Thursday, 21 July 1994

SECURITY COUNCIL

11 a.m.	consultations of the whole (closed)	Consultation Room

Subjects

- Rwanda

Jeudi 21 juillet 1994

CONSEIL DE SECURITE

11 heures	consultations plénières (privées)	Salle de consultation

Sujets

- Rwanda

SIGNATURES, RATIFICATIONS, ETC.

[MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL]

United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982

Ratification: Sri Lanka (19 July 1994)*

* The date of receipt of the relevant documents.

[TRAITES MULTILATERAUX DEPOSES AUPRES DU SECRETAIRE GENERAL]

Convention des Nations Unies sur le droit de la mer, conclue à Montego Bay (Jamaïque) le 10 décembre 1982

Ratification : Sri Lanka (19 juillet 1993*)

* Date de réception des documents pertinents.

Annex XVIII

Example of depositary notification concerning the deposit of an instrument of ratification and specifying the date of entry into force of the treaty for the State concerned

(XXVII.1 (c))

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS--ADRESSE POSTALE UNITED NATIONS, N.Y. 10017

CABLE ADDRESS--ADRESSE TELEGRAPHIQUE UNATIONS NEW YORK

REFERENCE: C.N.107.1994.TREATIES-1 (Depositary Notification)

PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION CONCERNING THE CONTROL OF EMISSIONS OF NITROGEN OXIDES OR THEIR TRANSBOUNDARY FLUXES CONCLUDED AT SOFIA ON 31 OCTOBER 1988

RATIFICATION BY LIECHTENSTEIN

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 24 March 1994, the instrument of ratification by the Government of Liechtenstein of the above-mentioned Protocol was deposited with the Secretary-General.

In accordance with its article 15 (2), the Protocol will enter into force for Liechtenstein on the ninetieth day after the date of the deposit of the instrument, i.e. on 22 June 1994.

14 June 1994

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XIX

Example of depositary notification specifying the participation in a treaty by virtue of the deposit of an instrument in respect of another treaty

(X.7)
(X.7(a))
(X.7(b))

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.227.1989.TREATIES-1/1/2 (Depositary Notification)

CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS, CONCLUDED AT NEW YORK ON 14 JUNE 1974

RATIFICATION BY THE GERMAN DEMOCRATIC REPUBLIC

PROTOCOL AMENDING THE CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS CONCLUDED AT VIENNA ON 11 APRIL 1980

ACCESSION BY THE GERMAN DEMOCRATIC REPUBLIC

CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS, CONCLUDED AT NEW YORK ON 14 JUNE 1974, AS AMENDED BY THE PROTOCOL OF 11 APRIL 1980

PARTICIPATION BY THE GERMAN DEMOCRATIC REPUBLIC BY VIRTUE OF ITS ACCESSION TO THE PROTOCOL OF 11 APRIL 1980

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 31 August 1989, the instrument of ratification by the Government of the German Democratic Republic of the Convention of 14 June 1974 and the instrument of accession to the Protocol of 11 April 1980 were deposited with the Secretary-General.

By virtue of the said ratification and accession, the German Democratic Republic has also become a Contracting Party to the Convention as amended by the Protocol.

The 1974 Convention, the 1980 Protocol as well as the 1980 Convention as amended will all enter into force for the German Democratic Republic on 1 March 1990, i.e. the first day of the month following the expiration of six months after the date of the deposit of the said instruments in accordance with article 44 (2) of the 1974 Convention and IX (2) of the 1980 Protocol.

29 September 1989

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

General Assembly resolution 598 (VI)

598 (VI). Reservations to multilateral conventions

The General Assembly,

Bearing in mind the provisions of its resolution 478 (V) of 16 November 1950, which (1) requested the International Court of Justice to give an advisory opinion regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and (2) invited the International Law Commission to study the question of reservations to multilateral conventions,

Noting the Court's advisory opinion[2] of 28 May 1951 and the Commission's report,[3] both rendered pursuant to the said resolution,

1. *Recommends* that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them;

2. *Recommends* to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

3. *Requests* the Secretary-General:

(*a*) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

(*b*) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications.

360th plenary meeting,
12 January 1952.

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[2] See document A/1874.
[3] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9.*

General Assembly resolution 478 (V)

478 (V). Reservations to multilateral conventions

The General Assembly,

Having examined the report[3] of the Secretary-General regarding reservations to multilateral conventions,

Considering that certain reservations to the Convention[4] on the Prevention and Punishment of the Crime of Genocide have been objected to by some States,

Considering that the International Law Commission is studying the whole subject of the law of treaties, including the question of reservations,[5]

Considering that different views regarding reservations have been expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee,[6]

1. *Requests* the International Court of Justice to give an advisory opinion on the following questions:

"In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:

"I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?

"II. If the answer to question I is in the affirmative, what is the effect of the reservation as between the reserving State and:

"(*a*) The parties which object to the reservation?

"(*b*) Those which accept it?

"III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made:

"(*a*) By a signatory which has not yet ratified?

"(*b*) By a State entitled to sign or accede but which has not yet done so?";

2. *Invites* the International Law Commission:

(*a*) In the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary-General is the depositary, this report to be considered by the General Assembly at its sixth session;

(*b*) In connexion with this study, to take account of all the views expressed during the fifth session of the General Assembly, and particularly in the Sixth Committee;

3. *Instructs* the Secretary-General, pending the rendering of the advisory opinion by the International Court of Justice, the receipt of a report from the International Law Commission and further action by the General Assembly, to follow his prior practice with respect to the receipt of reservations to conventions and with respect to the notification and solicitation of approvals thereof, all without prejudice to the legal effect of objections to reservations to conventions as it may be recommended by the General Assembly at its sixth session.

305th plenary meeting,
16 November 1950.

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[3] See *Official Records of the General Assembly, Fifth Session, Sixth Committee, Annexes,* Agenda item 56, document A/1372.

[4] See resolution 260 A (III).

[5] See *Official Records of the General Assembly, Fifth Session, Supplement No. 12,* paragraphs 160-164.

[6] *Ibid., Sixth Committee,* 217th-225th meetings

Annex XXII

Excerpt from Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951: I.C.J. Reports, 1951, p. 29

THE COURT IS OF OPINION,

In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification,

On Question I:

by seven votes to five,

that a State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention.

On Question II:

by seven votes to five,

(a) that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention;

(b) that if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention,

it can in fact consider that the reserving State is a party to the Convention;

On Question III:

by seven votes to five,

(a) that an objection to a reservation made by a signatory State which has not yet ratified the Convention can have the legal effect indicated in the reply to Question I only upon ratification. Until that moment it merely serves as a notice to the other State of the eventual attitude of the signatory State;

(b) that an objection to a reservation made by a State which is entitled to sign or accede but which has not yet done so, is without legal effect.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-eighth day of May, one thousand nine hundred and fifty-one, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

Annex XXIII

Example of depositary notifications in connection with reservations or declarations made after the deposit of the corresponding instrument

UNITED NATIONS NATIONS UNIES

(XXII.1)

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.124.1980.TREATIES-1 10 June 1980

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS DONE AT NEW YORK ON 10 JUNE 1958

COMMUNICATIONS BY GREECE AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN RESPECT OF ARTICLE 1(3) OF THE CONVENTION

Sir,

I have the honour, upon instructions from the Secretary-General, to refer to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 and, in particular, to article 1(3) of the Convention which reads as follows:

> "3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration."

In this connexion, I wish to inform you that, in a communication received on 18 April 1980, the Government of Greece notified the Secretary-General that upon accession to the Convention (letter C.N.166.1962.TREATIES-6 of 6 August 1962) it had been its intention to formulate the following declaration included in the Enactment approving the Convention (D.L. No. 4220 dated 19 September 1961):

> (Translation) The present Convention is approved on condition of the two limitations set forth in article 1(3) of the Convention.

I also wish to inform you that, in a communication received on 5 May 1980, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that its instrument of accession to the said Convention (letter C.N.261.1975.TREATIES-8 of 1 October 1975) should have specified that the

Sent to the Ministry of Foreign Affairs
of Member States

United Kingdom would apply the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State and that this declaration should also have been made on behalf of Gibraltar, Hong Kong and the Isle of Man to which the Convention had been subsequently extended (letters C.N.27.1977.TREATIES-1 of 25 February 1977 and C.N.39.1979. TREATIES-1 of 12 March 1979).

In light of the depositary practice followed in similar cases, the Secretary-General proposes to receive the declarations in question for deposit in the absence of any objection on the part of one of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 90 days from the date of the present letter. In the absence of any such objection, the said declarations will take effect upon the expiration of the above-stipulated 90-day period.

Accept, Sir, the assurances of my highest consideration.

Erik Suy
The Legal Counsel

80/TT3 3K

UNITED NATIONS NATIONS UNIES

(XXII.1)

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE C.N.245.1980.TREATIES-3 17 September 1980

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS DONE AT NEW YORK ON 10 JUNE 1958

ACCEPTANCE OF DECLARATIONS BY GREECE AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN RESPECT OF ARTICLE 1(3) OF THE CONVENTION

Sir,

I have the honour, upon instructions from the Secretary-General, to refer to letter C.N.124.1980.TREATIES-1 of 10 June 1980 communicating the declarations made by the Governments of Greece and the United Kingdom of Great Britain and Northern Ireland in respect of article 1(3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

I wish to inform you that, within the period of 90 days from the date of the above-mentioned letter, none of the Contracting Parties expressed an objection to the declarations and that, consequently, they are deemed to have been accepted.

The said declarations took effect upon the expiration of the above-stipulated 90-day period, that is to say, on 8 September 1980.

Accept, Sir, the assurances of my highest consideration.

Erik Suy
The Legal Counsel

Annex XXIV

Example of depositary notification in connection with the entry into force of a treaty

(XXVII.8)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.372.1993.TREATIES-9 (Depositary Notification)

CONVENTION ON BIOLOGICAL DIVERSITY
OPENED FOR SIGNATURE AT RIO DE JANEIRO ON 5 JUNE 1992

RATIFICATION BY MONGOLIA

FULFILLMENT OF THE CONDITIONS REQUIRED UNDER ARTICLE 36 (1) FOR THE ENTRY INTO FORCE OF THE CONVENTION

STATUS OF THE CONVENTION AS AT 30 SEPTEMBER 1993

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

I

On 30 September 1993, the instrument of ratification by the Government of Mongolia of the above-mentioned Convention was deposited with the Secretary-General.

II

The said instrument of ratification is the thirtieth instrument of ratification, acceptance, approval or accession, deposited thus far with the Secretary-General. The conditions provided for in article 36 (1) of the Convention have therefore been met. Accordingly, the Convention will enter into force on the ninetieth day after the date of deposit of such instrument, i.e. on 29 December 1993.

III

As of 30 September 1993, the following instruments had been deposited on the dates indicated:

State	Ratification, accession (a), or acceptance (A)
Mauritius	4 September 1992
Seychelles	22 September 1992
Marshall Islands	8 October 1992
Maldives	9 November 1992
Monaco	20 November 1992
Canada	4 December 1992
China	5 January 1993
Saint Kitts and Nevis	7 January 1993

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XXV

Example of depositary notification in connection with the territorial extension of a treaty

UNITED NATIONS NATIONS UNIES

(III.11)

CABLE ADDRESS — ADRESSE TELEGRAPHIQUE

REFERENCE C.N.283.1989.TREATIES-4 (Depositary Notification)

CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 14 DECEMBER 1973

EXTENSION TO ANGUILLA (UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND)

The Secretary-General of the United Nations, acting in his capacity as depositary, and referring to depositary notification C.N.97.1979.TREATIES-2 of 16 May 1979 concerning, inter alia, the ratification by the United Kingdom of Great Britain and Northern Ireland of the above-mentioned Convention, communicates the following:

In a notification received on 16 November 1989, the Government of the United Kingdom of Great Britain and Northern Ireland declared that the said Convention was extended to Anguilla on 26 March 1987.

27 December 1989

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XXVI

Example of depositary notification pursuant to the deposit of an instrument of succession

(IV.2)

82/347 AP

UNITED NATIONS NATIONS UNIES

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CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.91.1982.TREATIES-3 (Depositary Notification)

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION
OPENED FOR SIGNATURE AT NEW YORK ON 7 MARCH 1966

SUCCESSION BY SOLOMON ISLANDS

The Secretary-General of the United Nations, acting in his capacity as depositary of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966, communicates the following:

On 17 March 1982, the notification of succession by the Government of Solomon Islands to the above-mentioned Convention was deposited with the Secretary-General.

16 April 1982

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

Annex XXVII

Example of depositary notification in connection with the deposit of an instrument of succession with different reservations than those made by the predecessor State

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE: C.N.210.1969.TREATIES-3 11 November 1969

CONVENTION RELATING TO THE STATUS OF REFUGEES
DONE AT GENEVA ON 28 JULY 1951
SUCCESSION BY ZAMBIA

Sir,

I am directed by the Secretary-General to inform you that, on 24 September 1969, the instrument of succession by the Government of Zambia to the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, was deposited with the Secretary-General.

In the said instrument, the Government of Zambia declared that it considers itself as continuing to be bound by the above-mentioned Convention, the application of which, with effect from 11 July 1960, had been extended by the Government of the United Kingdom of Great Britain and Northern Ireland to the former Federation of Rhodesia and Nyasaland, and that it undertakes to carry out the stipulations contained therein subject to the following reservations made pursuant to article 42 (1) of the Convention:

Article 17 (2)

"The Government of the Republic of Zambia wishes to state with regard to article 17, paragraph 2, that Zambia does not consider itself bound to grant to a refugee who fulfils any one of the conditions set out in sub-paragraphs (a) to (c) automatic exemption from the obligation to obtain a work permit.

"Further, with regard to article 17 as a whole, Zambia does not wish to undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens generally."

Annex XXVIII

Example of a "general" declaration of succession circulated by the Secretary-General

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS - UNATIONS NEWYORK - ADRESSE TELEGRAPHIQUE

REFERENCE LE 222 GUYA

..... The enclosed communication dated 30 June 1966 is transmitted at the request of the Prime Minister of Guyana to all States Members of the United Nations and the United Nations Specialised Agencies.

26 July 1966

BK

Ref.No. C. 16/14

Office of the Prime Minister,
Public Buildings,
Georgetown,
Guyana.

30th June, 1966.

Sir,

I have the honour to inform you that the Government of Guyana, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligations under international law to honour its treaty commitments, acknowledges that many treaty rights and obligations of the Government of the United Kingdom in respect of British Guiana were succeeded to by Guyana upon independence by virtue of customary international law.

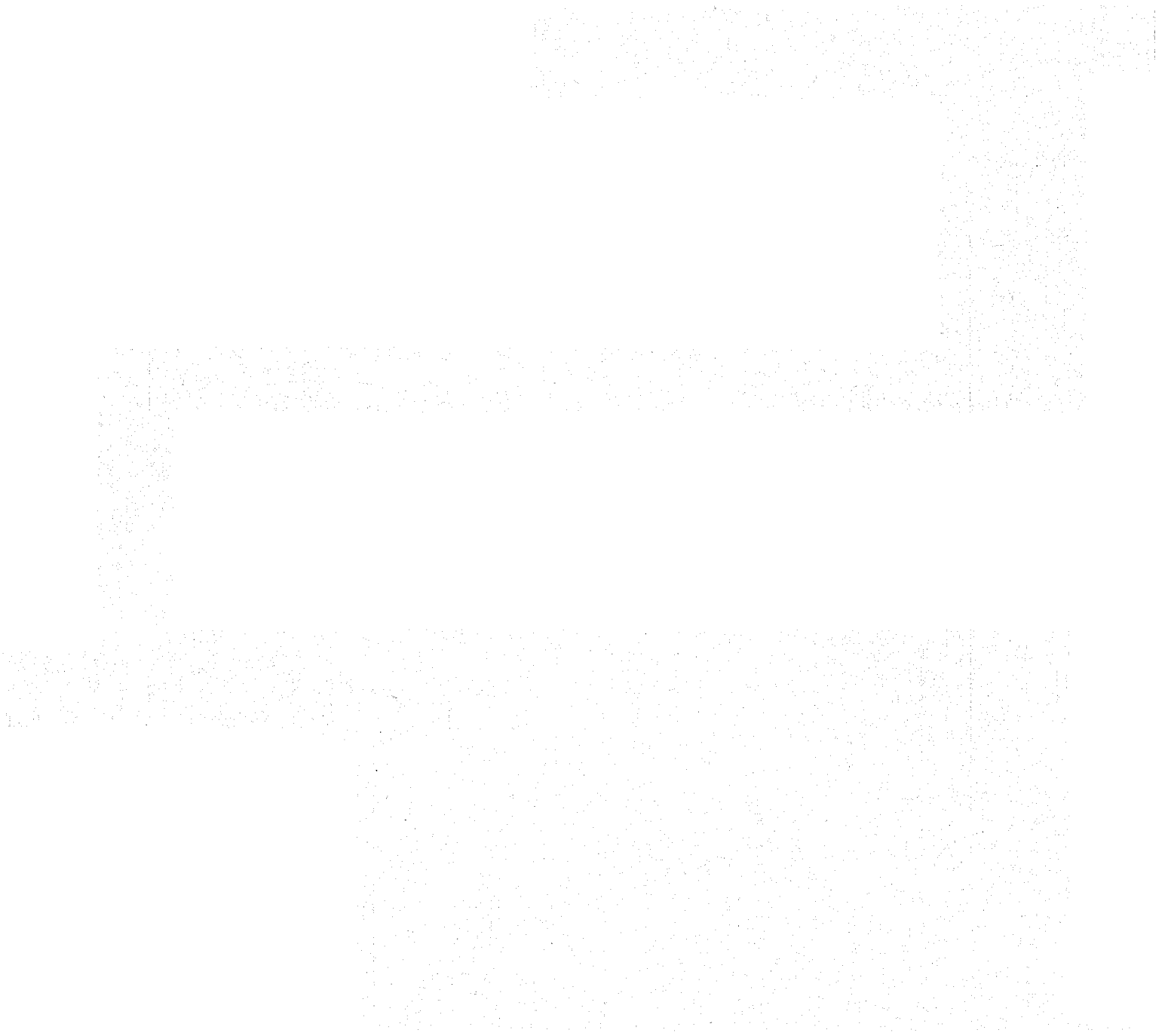
2. Since, however, it is likely that by virtue of customary international law certain treaties may have lapsed at the date of independence of Guyana, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Guyana wishes to treat as having lapsed.

3. As a result, the manner in which British Guiana was acquired by the British Crown, and its history previous to that date, consideration will have to be given to the question which, if any, treaties contracted previous to 1804 remain in force by virtue of customary international law.

4. It is desired that it be presumed that each treaty has been legally succeeded to by Guyana and that action be based on this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Guyana be of the opinion that it has legally succeeded to a treaty and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof.

5. The Government of Guyana desires that this letter be circulated to all States members of the United Nations and the United Nations Specialised Agencies, so that they will be effected with notice of the Government's attitude.

Accept, Sir, the assurance of my highest consideration.



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