

Treaty Handbook

Prepared by the Treaty Section of the Office of Legal Affairs



United Nations

UNITED NATIONS PUBLICATION

Sales No. E.02.V2
ISBN 92-1-133645-7

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FOREWORD

In its *Millennium Declaration*, the General Assembly of the United Nations emphasised the need to strengthen the international rule of law and respect for all internationally recognised human rights and fundamental freedoms, thus clearly highlighting a key area of focus for the United Nations in the new millennium.

The Secretary-General of the United Nations has reaffirmed his commitment to advancing the international rule of law. Treaties are the primary source of international law, and the Secretary-General is the main depositary of multilateral treaties in the world. At present, over 500 multilateral treaties are deposited with him. In his endeavours to enhance respect for the international rule of law, the Secretary-General has encouraged Member States that have not done so already to become parties to those treaties. The United Nations has undertaken a number of initiatives to assist States to become party to multilateral treaties and thereby contribute to strengthening the international rule of law.

This Handbook, prepared by the Treaty Section of the United Nations Office of Legal Affairs as a practical guide to the depositary practice of the Secretary-General and the registration practice of the Secretariat, is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework. It is written in simple language and, with the aid of diagrams and step-by-step instructions, touches upon many aspects of treaty law and practice. This Handbook is designed for use by States, international organizations and other entities. In particular, it is intended to assist States with scarce resources and limited technical proficiency in treaty law and practice to participate fully in the multilateral treaty framework.

In the past, the Treaty Section of the Office of Legal Affairs has received representatives from foreign ministries to provide them with the opportunity to familiarise themselves with the Secretary-General's depositary practice and the Secretariat's registration practice. In the future, the Treaty Section hopes to offer this opportunity to other Member State representatives. This Handbook is intended to facilitate such visits and will also be the basis for a pilot training programme that the Treaty Section, Office of Legal Affairs, and the United Nations Institute for Training and Research (UNITAR) will be offering permanent missions: *Deposit of Treaty Actions with the Secretary-General and the Registration of Treaties*.

Of course, aside from paper copies of this Handbook and face-to-face training, there are various resources available on the United Nations web site in relation to the depositary and registration practices applied within the United Nations. The web site at <http://untreaty.un.org> contains, among many other things, an electronic copy of this Handbook, a technical assistance site which directs users to relevant UN agencies and the United Nations Treaty Collection which contains the multilateral treaties deposited with the Secretary-General and the United Nations *Treaty Series*.

States are encouraged to make full use of the wealth of information contained in these pages and to contact the Treaty Section of the Office of Legal Affairs by e-mail at treaty@un.org with any comments or questions.

A handwritten signature in black ink, appearing to read 'Hans Corell', with a stylized flourish at the end.

Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

ABBREVIATIONS

This Handbook uses the following abbreviations:

| | |
|------------------------------|--|
| Regulations | Regulations to give effect to Article 102 of the <i>Charter of the United Nations</i> , United Nations <i>Treaty Series</i> , volume 859/860, p.VIII (see General Assembly resolution 97(I) of 14 December 1946, as amended by resolutions 364 B (IV) of 1 December 1949; 482 (V) of 12 December 1950; 33/141 of 19 December 1978; and 52/153 of 15 December 1997) |
| <i>Repertory of Practice</i> | <i>Repertory of Practice of United Nations Organs</i> (Volume V, New York, 1955) (see also Supplement No. 1, Volume II; Supplement No. 2, Volume III; Supplement No. 4, Volume II; Supplement No.5, Volume V; and Supplement No. 6, Volume VI) |
| Secretary-General | Secretary-General of the United Nations |
| <i>Summary of Practice</i> | <i>Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties</i> (ST/LEG/7/Rev.1) |
| Treaty Section | Treaty Section, Office of Legal Affairs of the United Nations |
| Vienna Convention 1969 | <i>Vienna Convention on the Law of Treaties, 1969</i> |
| Vienna Convention 1986 | <i>Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986</i> |

1 INTRODUCTION

In his *Millennium Report* (A/54/2000), the Secretary-General of the United Nations noted that “[s]upport for the rule of law would be enhanced if countries signed and ratified international treaties and conventions”. He further noted that many countries are unable to participate fully in the international treaty framework due to “the lack of the necessary expertise and resources, especially when national legislation is needed to give force to international instruments”. In the same report, the Secretary-General called upon “... all relevant United Nations entities to provide the necessary technical assistance that will make it possible for every willing state to participate fully in the emerging global legal order”.

The Millennium Summit was held at United Nations Headquarters, in New York, from 6 to 8 September 2000. Further to his commitment to the rule of law expressed in the *Millennium Report*, the Secretary-General invited all Heads of State and Government attending the Millennium Summit to sign and ratify treaties deposited with him. The response to the Secretary-General’s invitation was positive. The Treaty Signature/Ratification Event was held during the Millennium Summit and a total of 84 countries, of which 59 were represented at the level of Head of State or Government, undertook 274 treaty actions (signature, ratification, accession, etc.) in relation to over 40 treaties deposited with the Secretary-General.

The Secretary-General is the depositary for over 500 multilateral treaties. The depositary functions relating to multilateral treaties deposited with the Secretary-General are discharged by the Treaty Section of the Office of Legal Affairs of the United Nations. The Section is also responsible for the registration and publication of treaties submitted to the Secretariat pursuant to Article 102 of the *Charter of the United Nations*. Article 102 provides that every treaty and every international agreement entered into by a Member of the United Nations, after entry into force of the Charter, shall be registered with and published by the Secretariat.

Further to the Secretary-General’s commitment to advancing the international rule of law, this Handbook has been prepared as a guide to the Secretary-General’s practice as a depositary of multilateral treaties, and to treaty law and practice in relation to the registration function. This Handbook is mainly designed for the use of Member States, secretariats of international organizations, and others involved in assisting governments on the technical aspects of participation in the multilateral treaties deposited with the Secretary-General, and the registration of treaties with the Secretariat under Article 102. It is intended to promote wider State participation in the multilateral treaty framework.

This Handbook commences with a description of the depositary function, followed by an overview of the steps involved in a State becoming a party to a treaty. The following section highlights the key events of a multilateral treaty, from deposit with the Secretary-General to termination. Section 5 outlines the registration and filing and recording functions of the Secretariat, and how a party may go about submitting a treaty for registration or filing and recording. The final substantive section, section 6, contains practical hints on contacting the Treaty Section on treaty matters, and flow charts for carrying out various common treaty actions. Several annexes appear towards the end of this Handbook, containing various sample instruments for reference in concluding

treaties or performing treaty actions. A glossary listing common terms and phrases of treaty law and practice, many of which are used in this Handbook, is also included.

Treaty law and its practice are highly specialized. Nevertheless, this publication attempts to avoid extensive legal analyses of the more complex areas of the depositary and registration practices. Many of the complexities involving the depositary practice are addressed in the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1). The *Repertory of Practice of United Nations Organs* (volume V, New York, 1955, and Supplements 1-6) is also a valuable guide to the two practices. This Handbook is not intended to replace the *Summary of Practice* or the *Repertory of Practice*.

Readers are encouraged to contact the Treaty Section of the Office of Legal Affairs of the United Nations with questions or comments about this Handbook. This publication may need further elaboration and clarification in certain areas, and the views of readers will be invaluable for future revisions.

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2 DEPOSITING MULTILATERAL TREATIES

(See the *Summary of Practice*, paras. 9-37.)

2.1 Secretary-General as depositary

The Secretary-General of the United Nations, at present, is the depositary for over 500 multilateral treaties. The Secretary-General derives this authority from:

- (a) Article 98 of the *Charter of the United Nations*;
- (b) Provisions of the treaties themselves;
- (c) General Assembly resolution 24(1) of 12 February 1946; and
- (d) League of Nations resolution of 18 April 1946.

2.2 Depositary functions of the Secretary-General

The depositary of a treaty is responsible for ensuring the proper execution of all treaty actions relating to that treaty. The depositary's duties are international in character, and the depositary is under an obligation to act impartially in the performance of those duties.

The Secretary-General is guided in the performance of depositary functions by:

- (a) Provisions of the relevant treaty;
- (b) Resolutions of the General Assembly and other United Nations organs;
- (c) Customary international law; and
- (d) Article 77 of the Vienna Convention 1969.

In practice, the Treaty Section of the United Nations Office of Legal Affairs carries out depositary functions on behalf of the Secretary-General.

2.3 Designation of depositary

(See section 6.5, which explains how to arrange with the Treaty Section for deposit of a multilateral treaty with the Secretary-General.)

The negotiating parties to a multilateral treaty may designate the depositary for that treaty either in the treaty itself or in some other manner, e.g., through a separate decision adopted by the negotiating parties. When a treaty is adopted within the framework of the United Nations or at a conference convened by the United Nations, the treaty normally includes a provision designating the Secretary-General as the depositary for that treaty. If a multilateral treaty has not been adopted within the framework of an international organization or at a conference convened by such an organization, it is customary for the treaty to be deposited with the State that hosted the negotiating conference.

When a treaty is not adopted within the framework of the United Nations or at a conference convened by the United Nations, it is necessary for parties to seek the concurrence of the Secretary-General to be the depositary for the treaty before designating the Secretary-General as such. In view of the nature of the Secretary-General's role, being both political and legal, the Secretary-General gives careful consideration to the request. In general, the Secretary-General's policy is to assume depositary functions only for:

- (a) Multilateral treaties of worldwide interest adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations that are open to wide participation; and
- (b) Regional treaties adopted within the framework of the regional commissions of the United Nations that are open to participation by the entire membership of the relevant commissions.

Since final clauses are critical in providing guidance to the depositary and in discharging the depositary function effectively, it is important that the depositary be consulted in drafting them. Unclear final clauses may create difficulties in interpretation and implementation both for States parties and for the depositary.

3 PARTICIPATING IN MULTILATERAL TREATIES¹

3.1 Signature

3.1.1 Introduction

(See section 6.2, which illustrates how to arrange with the Treaty Section to sign a multilateral treaty.)

One of the most commonly used steps in the process of becoming party to a treaty is signing that treaty. Multilateral treaties contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc. Such treaties also list the methods by which a signatory State can become party to them, e.g., by ratification, acceptance, approval or accession.

3.1.2 Open for signature

(See the *Summary of Practice*, paras. 116-119.)

Multilateral treaties often provide that they will be open for signature only until a specified date, after which signature will no longer be possible. Once a treaty is closed for signature, a State may generally become a party to it by means of accession. Some multilateral treaties are open for signature indefinitely. Most multilateral treaties on human rights issues fall into this category, e.g., the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; *International Covenant on Civil and Political Rights, 1966*; and *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*.

Generally, multilateral treaties deposited with the Secretary-General of the United Nations make provision for signature by all States Members of the United Nations, or of the specialized agencies, or of the International Atomic Energy Agency, or parties to the *Statute of the International Court of Justice*. However, some multilateral treaties contain specific limitations on participation due to circumstances specific to them. For example:

- Article 2 of the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, 1998*, limits participation to “[c]ountries that are members of the Economic Commission for Europe (UN/ECE), regional economic integration organizations that are set up by ECE member countries and countries that are admitted to the ECE in a consultative capacity”.

3.1.3 Simple signature

Multilateral treaties usually provide for signature subject to ratification, acceptance or approval – also called simple signature. In such cases, a signing State does not undertake positive legal obligations under the treaty upon signature. However, signature indicates the State’s intention to take steps to express its consent to be bound by the treaty at a later date. Signature also creates an obligation, in the period between signature and

¹ For the sake of editorial convenience, the term “State”, as used in this Handbook, may include other entities competent at international law to enter into treaties.

ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty (see article 18 of the Vienna Convention 1969).

See, e.g., article 125(2) of the *Rome Statute of the International Criminal Court, 1998*: “This Statute is subject to ratification, acceptance or approval by signatory States. ...”

3.1.4 Definitive signature

Some treaties provide that States can express their consent to be legally bound solely upon signature. This method is most commonly used in bilateral treaties and rarely used for multilateral treaties. In the latter case, the entry into force provision of the treaty expressly provides that the treaty will enter into force upon signature by a given number of States.

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

Countries under paragraphs 1 and 2 of this Article may become Contracting Parties to the Agreement:

- (a) By signing it without reservation to a ratification;
- (b) By ratifying it after signing it subject to ratification;
- (c) By acceding to it.

3.2 Full powers

(See the *Summary of Practice*, paras. 101-115.)

3.2.1 Signature of a treaty without an instrument of full powers

(See section 6.2, which details how to arrange with the Treaty Section to sign a treaty.)

The Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty or undertake any other treaty action on behalf of the State without an instrument of full powers.

3.2.2 Requirement of instrument of full powers

A person other than the Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty only if that person possesses a valid instrument of full powers. This instrument empowers the specified representative to undertake given treaty actions. This is a legal requirement reflected in article 7 of the Vienna Convention 1969. It is designed to protect the interests of all States parties to a treaty as well as the integrity of the depositary. Typically, full powers are issued for the signature of a specified treaty.

Some countries have deposited general full powers with the Secretary-General. General full powers do not specify the treaty to be signed, but rather authorise a specified representative to sign all treaties of a certain kind.

3.2.3 Form of instrument of full powers

(See the model instrument of full powers in annex 3.)

As depositary, the Secretary-General insists on proper full powers for the person (other than a Head of State, Head of Government or Minister for Foreign Affairs) seeking to sign a treaty. Documents not containing a legible signature from one of the above-mentioned authorities are not acceptable (e.g., a telexed message). Signature of a treaty without proper full powers is not acceptable.

There is no specific form for an instrument of full powers, but it must include the following information:

1. The instrument of full powers must be **signed** by one of the three above-mentioned authorities and must unambiguously empower a specified person to sign the treaty. Full powers may also be issued by a person exercising the power of one of the above-mentioned three authorities of State *ad interim*. This should be stated clearly on the instrument.
2. Full powers are usually limited to one specific treaty and must indicate the **title of the treaty**. If the title of the treaty is not yet agreed, the full powers must indicate the subject matter and the name of the conference or the international organization where the negotiations are taking place.
3. Full powers must state the **full name and title of the representative** authorised to sign. They are individual and cannot be transferred to the “permanent representative ...”. Due to the individual character of the full powers, it is prudent to name at least two representatives, in case one is hindered by some unforeseen circumstance from performing the designated act.
4. **Date and place of signature** must be indicated.
5. **Official seal**. This is optional and it cannot replace the signature of one of the three authorities of State.

(See Note Verbale from the Legal Counsel of the United Nations of 30 September 1998, LA 41 TR/221/1 (extracted in annex 1)).

The following is an example of an instrument of full powers:

I have the honour to inform you that I (name), President of the Republic of (name of State), have given full powers to the Honourable Ms (name), Secretary of State for the Interior and Religious Affairs, to sign on behalf of (name of State) the United Nations Convention against Transnational Organized Crime and the following two Protocols to be opened for signature in Palermo, Italy, from 12th to 15th December 2000:

- i. Protocol against the smuggling of migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.
- ii. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.

This note constitutes the full powers empowering the Honourable (name) to sign the above-stated Convention and Protocols.

The Hon. (name), President of the Republic of (name of State)

[Signature]

Full powers are legally distinct from credentials, which authorise representatives of a State to participate in a conference and sign the Final Act of the conference.

3.2.4 *Appointment with the depositary for affixing signature*

(See section 6.2, which details how to arrange with the Treaty Section to sign a multilateral treaty and to have an instrument of full powers reviewed.)

As custodian of the original version of the treaty, the depositary verifies all full powers prior to signature. If the Secretary-General of the United Nations is the depositary for the treaty in question, the State wishing to sign the treaty should make an appointment for signature with the Treaty Section and submit to the Treaty Section for verification a copy of the instrument of full powers well in advance of signature (facsimiles are acceptable for this purpose). The State should present the original instrument of full powers at the time of signature. Full powers may be submitted by hand or mail to the Treaty Section.

3.3 Consent to be bound

(See the *Summary of Practice*, paras. 120-143.)

3.3.1 *Introduction*

(See section 6.3, which details how to arrange with the Treaty Section to ratify, accept, approve or accede to a treaty.)

In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways, as discussed below, are:

- (a) Definitive signature (see section 3.1.4);
- (b) Ratification;
- (c) Acceptance or approval; and
- (d) Accession.

The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty's entry into force (see section 4.2). Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a treaty through definitive signature or the deposit of an instrument of ratification, acceptance, approval or accession. Entry into force of a treaty with regard to a State is the moment the treaty becomes legally binding for the State that is party to the treaty. Each treaty contains provisions dealing with both aspects.

3.3.2 *Ratification*

Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

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

international level. Once a State has ratified a treaty at the international level, it must give effect to the treaty domestically. This is the responsibility of the State. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon ratification, the State becomes legally bound under the treaty.

Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally. Ratification at the national level is inadequate to establish a State's intention to be legally bound at the international level. The required actions at the international level shall also be undertaken.

Some multilateral treaties impose specific limitations or conditions on ratification. For example, when a State deposits with the Secretary-General an instrument of ratification, acceptance or approval of, or accession to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, it must at the same time notify the Secretary-General of its consent to be bound by any two or more of the protocols related to the Convention. The relevant protocols are: Protocols I, II and III of 10 October 1980; Protocol IV of 13 October 1995; and Protocol II, as amended, of 3 May 1996. Any State that expresses its consent to be bound by Protocol II after the amended Protocol II entered into force on 3 December 1998 is considered to have consented to be bound by Protocol II, as amended, unless it expresses a contrary intention. Such a State is also considered to have consented to be bound by the unamended Protocol II in relation to any State that is not bound by Protocol II, as amended, pursuant to article 40 of the Vienna Convention 1969.

3.3.3 *Acceptance or approval*

Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise (see article 14(2) of the Vienna Convention 1969). If the treaty provides for acceptance or approval without prior signature, such acceptance or approval is treated as an accession, and the rules relating to accession would apply.

Certain treaties deposited with the Secretary-General permit acceptance or approval with prior signature, e.g., the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980*, and the *Food Aid Convention, 1999*. The European Union uses the mechanism of acceptance or approval frequently (depository notification C.N.514.2000.TREATIES-6):

[T]he Convention entered into force on 1 July 1999 among the Governments and the intergovernmental organisation which, by 30 June 1999 had deposited their instruments of ratification, acceptance, approval or accession, or provisional application of the Convention, including the European Community. ...

3.3.4 *Accession*

A State may generally express its consent to be bound by a treaty by depositing an instrument of accession with the depositary (see article 15 of the Vienna Convention 1969). Accession has the same legal effect as ratification. However, unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession. The Secretary-General, as depositary, has tended to treat instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned have been advised accordingly.

Most multilateral treaties today provide for accession as, for example, article 16 of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*. Some treaties provide for States to accede even before the treaty enters into force. Thus, many environmental treaties are open for accession from the day after the treaty closes for signature, as, for example, article 24(1) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*.

3.3.5 *Practical considerations*

Form of instrument of ratification, acceptance, approval or accession

(See the model instrument of ratification, acceptance or approval in annex 4 and the model instrument of accession in annex 5.)

When a State wishes to ratify, accept, approve or accede to a treaty, it must execute an instrument of ratification, acceptance, approval or accession, signed by one of three specified authorities, namely the Head of State, Head of Government or Minister for Foreign Affairs. There is no mandated form for the instrument, but it must include the following:

1. Title, date and place of conclusion of the treaty concerned;
2. Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities;
3. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
4. Date and place where the instrument was issued; and
5. Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.

Delivery to the Secretary-General

An instrument of ratification, acceptance, approval or accession becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations

Headquarters in New York. The date of deposit is normally recorded as that on which the instrument is received at Headquarters.

States are advised to deliver such instruments to the Treaty Section of the United Nations directly to ensure the action is promptly processed. The individual who delivers the instrument of ratification does not require full powers. In addition to delivery by hand, instruments may also be mailed or faxed to the Treaty Section. If a State initially faxes an instrument, it must also provide the original as soon as possible thereafter to the Treaty Section.

Translations

It is recommended that, where feasible, States provide courtesy translations in English and/or French of instruments in other languages submitted for deposit with the Secretary-General. This facilitates the prompt processing of the relevant actions.

3.4 Provisional application

(See the *Summary of Practice*, para. 240.)

Some treaties provide for provisional application, either before or after their entry into force. For example, article 7(1) of the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, provides “If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force”. The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995*, also provides for provisional application, ceasing upon its entry into force.

A State provisionally applies a treaty that has entered into force when it unilaterally undertakes, in accordance with its provisions, to give effect to the treaty obligations provisionally, even though its domestic procedural requirements for international ratification, approval, acceptance or accession have not yet been completed. The intention of the State would generally be to ratify, approve, accept or accede to the treaty once its domestic procedural requirements have been met. The State may unilaterally terminate such provisional application at any time unless the treaty provides otherwise (see article 25 of the Vienna Convention 1969). In contrast, a State that has consented to be bound by a treaty through ratification, approval, acceptance, accession or definitive signature is governed by the rules on withdrawal and denunciation specified in the treaty as discussed in section 4.5 (see articles 54 and 56 of the Vienna Convention 1969).

3.5 Reservations

(See section 6.4, which shows how to arrange with the Treaty Section to make a reservation or declaration. See also the *Summary of Practice*, paras. 161-216.)

3.5.1 *What are reservations?*

In certain cases, States make statements upon signature, ratification, acceptance, approval of or accession to a treaty. Such statements may be entitled “reservation”, “declaration”, “understanding”, “interpretative declaration” or “interpretative statement”. However phrased or named, any such statement purporting to exclude or modify the legal effect of a treaty provision with regard to the declarant is, in fact, a reservation (see article 2(1)(d) of the Vienna Convention 1969). A reservation may enable a State to participate in a multilateral treaty that the State would otherwise be unwilling or unable to participate in.

3.5.2 *Vienna Convention 1969*

Article 19 of the Vienna Convention 1969 specifies that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, make a reservation unless:

- (a) The reservation is prohibited by the treaty;
- (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the treaty.

In some cases, treaties specifically prohibit reservations. For example, article 120 of the *Rome Statute of the International Criminal Court, 1998*, provides: “No reservations may be made to this Statute”. Similarly, no entity may make a reservation or exception to the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, except where expressly permitted elsewhere in the agreement.

3.5.3 *Time for formulating reservations*

Formulating reservations upon signature, ratification, acceptance, approval or accession

Article 19 of the Vienna Convention 1969 provides for reservations to be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession. If a reservation is made upon simple signature (i.e., signature subject to ratification, acceptance or approval), it is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound.

Formulating reservations after ratification, acceptance, approval or accession

Where the Secretary-General, as depositary, receives a reservation after the deposit of the instrument of ratification, acceptance, approval or accession that meets all the necessary requirements, the Secretary-General circulates the reservation to all the States concerned. The Secretary-General accepts the reservation in deposit only if no such State informs him that it does not wish him to consider it to have accepted that reservation. This is a situation where the Secretary-General’s practice deviates from the strict requirements of the Vienna Convention 1969. On 4 April 2000, in a letter addressed to the Permanent Representatives to the United Nations, the Legal Counsel advised that the time limit for objecting to such a reservation would be 12 months from the date of the depositary notification. The same principle has been applied by the Secretary-General, as depositary, where a reserving State to a treaty has withdrawn an initial reservation but has

substituted it with a new or modified reservation (LA 41TR/221 (23-1) (extracted in annex 2)).

3.5.4 Form of reservations

Normally, when a reservation is formulated, it must be included in the instrument of ratification, acceptance, approval or accession or be annexed to it and (if annexed) must be separately signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

3.5.5 Notification of reservations by the depositary

Where a treaty expressly prohibits reservations

Where a treaty expressly prohibits reservations, the Secretary-General, as depositary, may have to make a preliminary legal assessment as to whether a given statement constitutes a reservation. If the statement has no bearing on the State's legal obligations, the Secretary-General circulates the statement to the States concerned.

If a statement on its face, however phrased or named (see article 2(1)(d) of the Vienna Convention 1969), unambiguously purports to exclude or modify the legal effects of provisions of the treaty in their application to the State concerned, contrary to the provisions of the treaty, the Secretary-General will refuse to accept that State's signature, ratification, acceptance, approval or accession in conjunction with the statement. The Secretary-General will draw the attention of the State concerned to the issue and will not circulate the unauthorised reservation. This practice is followed only in instances where, *prima facie*, there is no doubt that the reservation is unauthorised and that the statement constitutes a reservation.

Where such a *prima facie* determination is not possible, and doubts remain, the Secretary-General may request a clarification from the declarant on the real nature of the statement. If the declarant formally clarifies that the statement is not a reservation but only a declaration, the Secretary-General will formally receive the instrument in deposit and notify all States concerned accordingly.

The Secretary-General, as depositary, is not required to request such clarifications automatically; rather, it is for the States concerned to raise any objections they may have to statements they consider to be unauthorised reservations.

For example, articles 309 and 310 of the *United Nations Convention on the Law of the Sea, 1982*, provide that States may not make reservations to the Convention (unless expressly permitted elsewhere in the Convention) and that declarations or statements, however phrased or named, may only be made if they do not purport to exclude or modify the legal effect of the provisions of the Convention in their application to the reserving State.

Where a treaty expressly authorises reservations

Where a State formulates a reservation that is expressly authorised by the relevant treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification. Unless a translation or an in-depth analysis is required, such a notification is processed and transmitted by e-mail to the States concerned on the date of formulation. A

reservation of this nature does not require any subsequent acceptance by the States concerned, unless the treaty so provides (see article 20(1) of the Vienna Convention 1969).

Where a treaty is silent on reservations

Where a treaty is silent on reservations and a State formulates a reservation consistent with article 19 of the Vienna Convention 1969, the Secretary-General, as depositary, informs the States concerned of the reservation by depositary notification, including by e-mail. Generally, human rights treaties do not contain provisions relating to reservations.

3.5.6 Objections to reservations

Time for making objections to reservations

Where a treaty is silent on reservations and a reservation is formulated and subsequently circulated, States concerned have 12 months to object to the reservation, beginning on the date of the depositary notification or the date on which the State expressed its consent to be bound by the treaty, whichever is later (see article 20(5) of the Vienna Convention 1969).

Where a State concerned lodges an objection to a treaty with the Secretary-General after the end of the 12-month period, the Secretary-General circulates it as a “communication”. See, e.g., the objection dated 27 April 2000 by a State to a reservation that another State made upon its accession on 22 January 1999 to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989* (depositary notification C.N.276.2000.TREATIES-7):

The Government of (name of State) has examined the reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights. The Government of (name of State) recalls that reservations other than the kind referred to in Article 2 of the Protocol are not permitted. The reservation made by the Government of (name of State) goes beyond the limit of Article 2 of the Protocol, as it does not limit the application of the death penalty to the most serious crimes of a military nature committed during the time of war. The Government of (name of State) therefore objects to the aforesaid reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights. This shall not preclude the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights between (name of State) and (name of State), without (name of State) benefiting from the reservation.

Many States have formulated reservations to the International Covenant on Civil and Political Rights, 1966, and the Convention on the Elimination of All Forms of Discrimination against Women, 1979, subjecting their obligations under the treaty to domestic legal requirements. These reservations, in turn, have attracted a wide range of objections from States parties (see Multilateral Treaties Deposited with the Secretary-General ST/LEG/SER.E/19, volume I, part I, chapter IV).

Effect of objection on entry into force of reservations

An objection to a reservation “... does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State” (article 20(4)(b) of the Vienna Convention 1969).

Normally, to avoid uncertainty, an objecting State specifies whether its objection to the reservation precludes the entry into force of the treaty between itself and the reserving State. The Secretary-General circulates such objections.

See, e.g., the objection by a State to a reservation that another State made upon its accession to the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (depositary notification C.N.204.1998.TREATIES-6):

The Government of (name of State) considers the reservations made by (name of State) regarding article 9, paragraph 2, and article 16 first paragraph (c), (d), (f) and (g), of the Convention on the Elimination of All Forms of Discrimination against Women incompatible with the object and purpose of the Convention (article 28, paragraph 2). This objection shall not preclude the entry into force of the Convention between (name of State) and (name of State).

If a State does not object to a reservation made by another State, the first State is deemed to have tacitly accepted the reservation (article 21(1) of the Vienna Convention 1969).

3.5.7 *Withdrawal of reservations*

A State may, unless the treaty provides otherwise, withdraw its reservation or objection to a reservation completely or partially at any time. In such a case, the consent of the States concerned is not necessary for the validity of the withdrawal (articles 22-23 of the Vienna Convention 1969). The withdrawal must be formulated in writing and signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. The Secretary-General, as depositary, circulates a notification of a withdrawal to all States concerned, as, for example, depositary notification C.N.899.2000.TREATIES-7:

The reservation submitted by (name of State) with regard to Article 7 (b) on the occasion of the ratification of the Convention on the Elimination of All Forms of Discrimination against Women is withdrawn.

Article 22(3) of the Vienna Convention 1969 provides that the withdrawal of a reservation becomes operative in relation to another State only when that State has been notified of the withdrawal. Similarly, the withdrawal of an objection to a reservation becomes operative when the reserving State is notified of the withdrawal.

3.5.8 *Modifications to reservations*

An existing reservation may be modified so as to result in a partial withdrawal or to create new exemptions from, or modifications of, the legal effects of certain provisions of a treaty. A modification of the latter kind has the nature of a new reservation. The Secretary-General, as depositary, circulates such modifications and grants the States concerned a specific period within which to object to them. In the absence of objections, the Secretary-General accepts the modification in deposit.

In the past, the Secretary-General's practice as depositary had been to stipulate 90 days as the period within which the States concerned could object to such a modification. However, since the modification of a reservation could involve complex issues of law and policy, the Secretary-General decided that this time period was inadequate. Therefore, on 4 April 2000, the Secretary-General advised that the time provided for

objections to modifications would be 12 months from the date of the depositary notification containing the modification (LA 41 TR/221 (23-1) (extracted in annex 2)).

See, e.g., the modification of a reservation made by a State upon its accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989 (depositary notification C.N.934.2000.TREATIES-15):

In keeping with the depositary practice followed in similar cases, the Secretary-General proposes to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 12 months from the date of the present depositary notification. In the absence of any such objection, the above modification will be accepted for deposit upon the expiration of the above-stipulated 12-month period, that is on 5 October 2001.

3.6 Declarations

(See the *Summary of Practice*, paras. 217-220.)

3.6.1 Interpretative declarations

A State may make a declaration about its understanding of a matter contained in or the interpretation of a particular provision in a treaty. Interpretative declarations of this kind, unlike reservations, do not purport to exclude or modify the legal effects of a treaty. The purpose of an interpretative declaration is to clarify the meaning of certain provisions or of the entire treaty.

Some treaties specifically provide for interpretative declarations. For example, when signing, ratifying or acceding to the *United Nations Convention on the Law of the Sea, 1982*, a State may make declarations with a view to harmonising its laws and regulations with the provisions of that convention, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of the convention in their application to that State.

3.6.2 Optional and mandatory declarations

Treaties may provide for States to make optional and/or mandatory declarations. These declarations are legally binding on the declarants.

Optional declarations

Many human rights treaties provide for States to make optional declarations that are legally binding upon them. In most cases, these declarations relate to the competence of human rights commissions or committees (see section 4.3). See, e.g., article 41 of the *International Covenant on Civil and Political Rights, 1966*:

A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. ...

Mandatory declarations

Where a treaty requires States becoming party to it to make a mandatory declaration, the Secretary-General, as depositary, seeks to ensure that they make such declarations.

Some disarmament and human rights treaties provide for mandatory declarations, as, for example, article 3 of the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*. Article 3(2) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*, provides:

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

Mandatory declarations also appear in some treaties on the law of the sea. For example, when an international organization signs the *United Nations Convention on the Law of the Sea, 1982* (UNCLOS), or the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995* (1995 Agreement), it must make a declaration specifying the matters governed by UNCLOS in respect of which the organization's member States have conferred competence on the organization, and the nature and extent of that competence. The States conferring such competence must be signatories to UNCLOS. Where an international organization has competence over all matters governed by the 1995 Agreement, it must make a declaration to that effect upon signature or accession, and its member States may not become States parties to the 1995 Agreement except in respect of any of their territories for which the international organization has no responsibility.

3.6.3 Time for formulating declarations

Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification, acceptance, approval or accession. Sometimes, a declaration may be lodged subsequently.

3.6.4 Form of declarations

Since an interpretative declaration does not have a legal effect similar to that of a reservation, it need not be signed by a formal authority as long as it clearly emanates from the State concerned. Nevertheless, such a declaration should preferably be signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. This practice avoids complications in the event of a doubt whether the declaration in fact constitutes a reservation.

Optional and mandatory declarations impose legal obligations on the declarant and therefore must be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities.

3.6.5 Notification of declarations by the depositary

The Secretary-General, as depositary, reviews all declarations to treaties that prohibit reservations to ensure that they are *prima facie* not reservations (see the discussion on prohibited reservations in section 3.5.5). Where a treaty is silent on or authorises reservations, the Secretary-General makes no determination about the legal status of

declarations relating to that treaty. The Secretary-General simply communicates the text of the declaration to all States concerned by depositary notification, including by e-mail, allowing those States to draw their own legal conclusions as to its status.

3.6.6 Objections to declarations

Objections to declarations where the treaty is silent on reservations

States sometimes object to declarations relating to a treaty that is silent on reservations. The Secretary-General, as depositary, circulates any such objection. For example, the Federal Republic of Germany made declarations to certain treaties with the effect of extending the provisions of those treaties to West Berlin. The Union of Soviet Socialist Republics objected to these declarations (see, e.g., notes 3 and 4 to the *Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976*, in *Multilateral Treaties Deposited with the Secretary-General*, ST/LEG/SER.E/19, volume II, part I, chapter XXVI.1).

Objections generally focus on whether the statement is merely an interpretative declaration or is in fact a true reservation sufficient to modify the legal effects of the treaty. If the objecting State concludes that the declaration is a reservation and/or incompatible with the object and purpose of the treaty, the objecting State may prevent the treaty from entering into force between itself and the reserving State. However, if the objecting State intends this result, it should specify it in the objection.

See, e.g., the objection by a State to a declaration made by another State upon its accession to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (depositary notification C.N.910.1999.TREATIES-13):

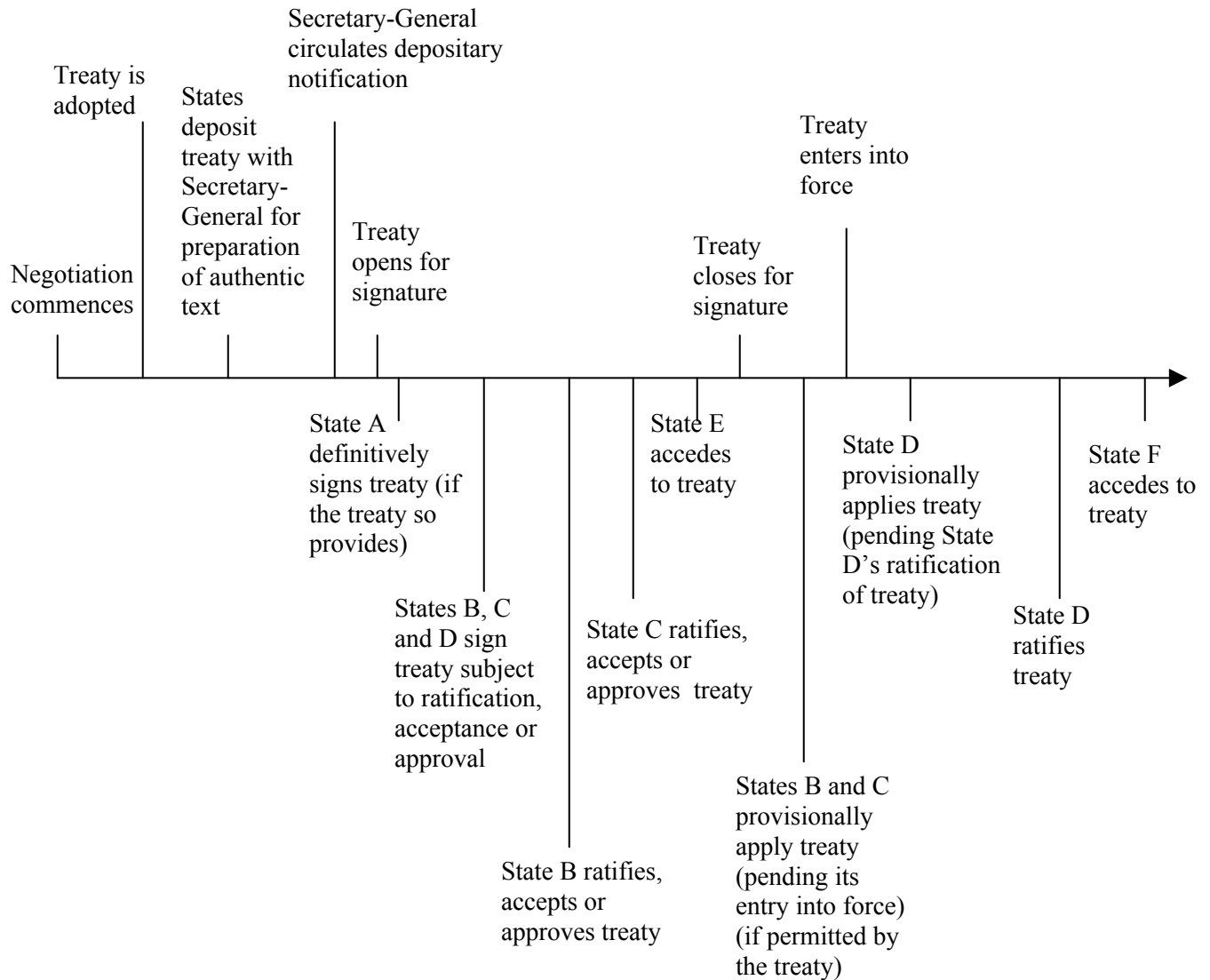
The Government of (name of State) notes that the declaration made by (name of State) in fact constitutes a reservation since it is aimed at precluding or modifying the legal effect of certain provisions of the treaty. A reservation which consists in a general reference to domestic law without specifying its contents does not clearly indicate to the other parties to what extent the State which issued the reservation commits itself when acceding to the Convention. The Government of (name of State) considers the reservation of (name of State) incompatible with the objective and purpose of the treaty, in respect of which the provisions relating to the right of victims of acts of torture to obtain redress and compensation, which ensure the effectiveness and tangible realization of obligations under the Convention, are essential, and consequently lodges an objection to the reservation entered by (name of State) regarding article 14, paragraph 1. This objection does not prevent the entry into force of the Convention between (name of State) and (name of State).

An objecting State sometimes requests that the declarant “clarify” its intention. In such a situation, if the declarant agrees that it has formulated a reservation, it may either withdraw its reservation or confirm that its statement is only a declaration.

4 KEY EVENTS IN A MULTILATERAL TREATY

4.1 Overview

This section outlines what happens to a treaty after it is adopted. The time line below shows a possible sequence of events as a treaty enters into force and States become parties to it.



4.2 Entry into force

(See the *Summary of Practice*, paras. 221-247.)

4.2.1 Definitive entry into force

Typically, the provisions of a multilateral treaty determine the date upon which the treaty enters into force. Where a treaty does not specify a date or provide another method for its entry into force, the treaty is presumed to be intended to come into force as soon as all negotiating States have consented to be bound by the treaty.

Treaties, in general, may enter into force:

- (a) Upon a certain number of States depositing instruments of ratification, approval, acceptance or accession with the depositary;
See, e.g., article VIII of the *Protocol relating to the Status of Refugees, 1967*:
The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
- (b) Upon a certain percentage, proportion or category of States depositing instruments of ratification, approval, acceptance or accession with the depositary;
See, e.g., article XIV of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*:
This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.
- (c) A specific time after a certain number of States have deposited instruments of ratification, acceptance, approval or accession with the depositary;
See, e.g., article 126(1) of the *Rome Statute of the International Criminal Court, 1998*:
This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
- (d) On a specific date.
See, e.g., article 45(1) of the *International Coffee Agreement 2001, 2000*:
This Agreement shall enter into force definitively on 1 October 2001 if by that date Governments representing at least 15 exporting Members holding at least 70 percent of the votes of the exporting Members and at least 10 importing Members holding at least 70 percent of the votes of the importing Members, calculated as at 25 September 2001, without reference to possible suspension under the terms of Articles 25 and 42, have deposited instruments of ratification, acceptance or approval. ...

Once a treaty has entered into force, if the number of parties subsequently falls below the minimum number specified for entry into force, the treaty remains in force unless the treaty itself provides otherwise (see article 55 of the Vienna Convention 1969).

4.2.2 *Entry into force for a state*

Where a State definitively signs or ratifies, accepts, approves or accedes to a treaty that has already entered into force, the treaty enters into force for that State according to the relevant provisions of the treaty. Treaties often provide for entry into force for a State in these circumstances:

- (a) At a specific time after the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession:
 See, e.g., article 126(2) of the *Rome Statute of the International Criminal Court, 1998*:
 For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.
- (b) On the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession.
 See, e.g., article VIII of the *Protocol relating to the Status of Refugees, 1967*:
 For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

4.2.3 *Provisional entry into force*

It is noted, nevertheless, that some treaties include provisions for their provisional entry into force. This enables States that are ready to implement the obligations under a treaty to do so among themselves, without waiting for the minimum number of ratifications necessary for its formal entry into force, if this number is not obtained within a given period. See, e.g., the *International Coffee Agreement, 1994, as extended until 30 September 2001, with modifications, by Resolution No. 384 adopted by the International Coffee Council in London on 21 July 1999, 1994*. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner.

4.3 **Dispute resolution and compliance mechanisms**

Many treaties contain detailed dispute resolution provisions, but some contain only elementary provisions. Where a dispute, controversy or claim arises out of a treaty (for example, due to breach, error, fraud, performance issues, etc.) these provisions become extremely important. If a treaty does not provide a dispute resolution mechanism, article 66 of the Vienna Convention 1969 may apply.

Treaties may provide various dispute resolution mechanisms, such as negotiation, consultation, conciliation, use of good offices, panel procedures, arbitration, judicial settlement, reference to the International Court of Justice, etc. See, e.g., article 119(2) of the *Rome Statute of the International Criminal Court, 1998*:

Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months

of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

In some recently concluded treaties, detailed compliance mechanisms are included. Many disarmament treaties and some environmental treaties provide compliance mechanisms, for example, by imposing monitoring and reporting requirements. See, e.g., article 8 of the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, which provides that the parties "... shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance". During the Fourth Meeting of the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Copenhagen 1992), the parties adopted a detailed non-compliance procedure (*Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, 1992* (UNEP/OzL.Pro.4/15), decision IV/5, and annexes IV and V; see <<http://www.unep.org>>).

Many human rights treaties provide for independent committees to oversee the implementation of their provisions. For example, the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999*; and the *International Covenant on Civil and Political Rights, 1966*.

4.4 Amendments

(See the *Summary of Practice*, paras. 248-255.)

4.4.1 Amending treaties that have entered into force

The text of a treaty may be amended in accordance with the amendment provisions in the treaty itself or in accordance with chapter IV of the Vienna Convention 1969. If the treaty does not specify any amendment procedures, the parties may negotiate a new treaty or agreement amending the existing treaty.

An amendment procedure within a treaty may contain provisions governing the following:

(a) Proposal of amendments

See, e.g., article 12(1) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*:

Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. ...

(b) Circulation of proposals of amendments

Normally, the relevant treaty secretariat circulates proposals of amendment. The treaty secretariat is in the best position to determine the validity of the amendment proposed and undertake any necessary

consultation. The treaty itself may detail the secretariat's role in this regard. In the absence of circulation of the amendment by the treaty body, the Secretary-General, as depositary, may perform this function.

(c) Adoption of amendments

Amendments may be adopted by States parties at a conference or by an executive body such as the executive arm of the treaty. See, e.g., article 13(4) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

(d) Parties' consent to be bound by amendments

Treaties normally specify that a party must formally consent to be bound by an amendment, following adoption, by depositing an instrument of ratification, acceptance or approval of the amendment. See, e.g., article 39(3) of the *United Nations Convention against Transnational Organized Crime, 2000*:

An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

(e) Entry into force of amendments

An amendment can enter into force in a number of ways, e.g., upon:

- (i) Adoption of the amendment;
- (ii) Elapse of a specified time period (30 days, three months, etc.);
- (iii) Its assumed acceptance by consensus if, within a certain period of time following its circulation, none of the parties to the treaty objects; or
- (iv) Deposit of a specified number of instruments of ratification, acceptance or approval, etc.

See, e.g., article 20(4) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*:

Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

(f) Effect of amendments: two approaches

Depending on the treaty provisions, an amendment to a treaty may, upon its entry into force, bind:

- (i) Only those States that formally accepted the amendment (see paragraph (d) above); or
- (ii) In rare cases, all States parties to the treaty.

(g) States that become parties after the entry into force of an amendment

Where a State becomes party to a treaty which has undergone amendment, it becomes party to the treaty as amended, unless otherwise indicated (see article 40(5)(a) of the Vienna Convention 1969). The provisions of the treaty determine which States are bound by the amendment. See, e.g., article 13(5) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

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

4.4.2 Amending treaties that have not entered into force

Where a treaty has not entered into force, it is not possible to amend the treaty pursuant to its own provisions. Where States agree that the text of a treaty needs to be revised, subsequent to the treaty's adoption, but prior to its entry into force, signatories and contracting parties may meet to adopt additional agreements or protocols to address the problem. While contracting parties and signatories play an essential role in such negotiations, it is not unusual for all interested countries to participate. See, e.g., the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*.

4.4.3 Determining the date on which an amendment enters into force

The Secretary-General, as depositary, is guided by the amendment provisions of a treaty in determining when an amendment to the treaty enters into force. Many treaties specify that an amendment enters into force when a specified number of ratifications, acceptances or approvals are received by the depositary. However, where the amendment provision specifies that entry into force occurs when a certain proportion of the parties to a treaty have ratified, accepted or approved the amendment, then the determination of the time of entry into force becomes less certain. For example, if an amendment is to enter into force after two-thirds of the parties have expressed their consent to be bound by it, does this mean two-thirds of the parties to the treaty at the time the amendment is adopted or two-thirds of the parties to the treaty at any given point in time following such adoption?

In these cases, it is the Secretary-General's practice to apply the latter approach, sometimes called the current time approach. Under this approach, the Secretary-General, as depositary, counts all parties at any given time in determining the time an amendment enters into force. Accordingly, States that become parties to a treaty after the adoption of an amendment but before its entry into force are also counted. As far back as 1973, the Secretary-General, as depositary, applied the current time approach to the amendment of Article 61 of the *Charter of the United Nations*.

4.5 Withdrawal and denunciation

(See the *Summary of Practice*, paras. 157-160.)

In general terms, a party may withdraw from or denounce a treaty:

- (a) In accordance with any provisions of the treaty enabling withdrawal or denunciation (see article 54(a) of the Vienna Convention 1969);
- (b) With the consent of all parties after consultation with all contracting States (see article 54(b) of the Vienna Convention 1969); or
- (c) In the case of a treaty that is silent on withdrawal or denunciation, by giving at least 12 months' notice, and provided that:
 - (i) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
 - (ii) A right of denunciation or withdrawal may be implied by the nature of the treaty (see article 56 of the Vienna Convention 1969).

States wishing to invoke article 56 of the Vienna Convention 1969 ((c)(i) and (ii) above) carry the burden of proof.

Some treaties, including human rights treaties, do not contain withdrawal provisions. See, e.g., the *International Covenant on Civil and Political Rights, 1966*. The Secretary-General, as depositary, has taken the view that it would not appear possible for a party to withdraw from such a treaty except in accordance with article 54 or 56 of the Vienna Convention 1969 (see depositary notification C.N.467.1997.TREATIES-10).

Where a treaty contains provisions on withdrawal, the Secretary-General is guided by those provisions. For example, article 12(1) of the *Optional Protocol to the International Covenant on Civil and Political Rights, 1966*, provides for denunciation by States parties as follows:

Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

This provision has been used by a State to notify the Secretary-General of its intention to denounce the Protocol.

4.6 Termination

(See the *Summary of Practice*, paras. 256-262.)

Treaties may include a provision regarding their termination. Article 42(2) of the Vienna Convention 1969 states that a treaty may only be terminated as a result of the application of the provisions of the treaty itself or of the Vienna Convention 1969 (e.g., articles 54, 56, 59-62 and 64). A treaty can be terminated by a subsequent treaty to which all the parties of the former treaty are also party.

5 REGISTERING OR FILING AND RECORDING TREATIES

5.1 Article 102 of the Charter of the United Nations

(See the *Repertory of Practice*, Article 102, para. 1).

Article 102 of the *Charter of the United Nations* provides that:

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement, which has not been registered in accordance with the provisions of paragraph 1 of this Article, may invoke that treaty or agreement before any organ of the United Nations.

Thus, States Members of the United Nations have a legal obligation to register treaties and international agreements with the Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements. Within the Secretariat, the Treaty Section is responsible for these functions.

Registration, not publication, is the prerequisite for a treaty or international agreement to be capable of being invoked before the International Court of Justice or any other organ of the United Nations.

The objective of article 102, which can be traced back to article 18 of the *Covenant of the League of Nations*, is to ensure that all treaties and international agreements remain in the public domain and thus assist in eliminating secret diplomacy. The *Charter of the United Nations* was drafted in the aftermath of the Second World War. At that time, secret diplomacy was believed to be a major cause of international instability.

5.2 Regulations to give effect to Article 102

(See the *Repertory of Practice*, Article 102, para. 2, and the annex to the General Survey.)

Recognising the need for the Secretariat to have uniform guidelines for implementing article 102, the General Assembly adopted certain Regulations to give effect to article 102 (see the Abbreviations section for the source of the Regulations). The Regulations treat the act of registration and the act of publication as two distinct operations. Parts one and two of the Regulations (articles 1-11) deal with registration and filing and recording. Part three of the Regulations (articles 12-14) relates to publication.

5.3 Meaning of treaty and international agreement under Article 102

5.3.1 Role of Secretariat

(See the *Repertory of Practice*, Article 102, para. 15.)

When the Secretariat receives instruments for the purpose of registration, the Treaty Section examines the instruments to determine whether they are capable of being registered. The Secretariat generally respects the view of a party submitting an instrument for registration that, in so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. However, the Secretariat examines each instrument to satisfy itself that it, *prima facie*, constitutes a treaty. The

Secretariat has the discretion to refrain from taking action if, in its view, an instrument submitted for registration does not constitute a treaty or an international agreement or does not meet all the requirements for registration stipulated by the Regulations (see section 5.6).

Where an instrument submitted fails to comply with the requirements under the Regulations or is unclear, the Secretariat places it in a “pending” file. The Secretariat then requests clarification, in writing, from the submitting party. The Secretariat will not process the instrument until it receives such clarification.

Where an instrument is registered with the Secretariat, this does not imply a judgement by the Secretariat of the nature of the instrument, the status of a party, or any similar question. Thus, the Secretariat’s acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status. Similarly, registration does not confer on a party to a treaty or international agreement a status that it would not otherwise have.

5.3.2 Form

(See the *Repertory of Practice*, Article 102, paras. 18-30.)

The *Charter of the United Nations* does not define the terms treaty or international agreement. Article 1 of the Regulations provides guidance on what comprises a treaty or international agreement by adding the phrase “whatever its form and descriptive name”. Therefore, the title and form of a document submitted to the Secretariat for registration are less important than its content in determining whether it is a treaty or international agreement. An exchange of notes or letters, a protocol, an accord, a memorandum of understanding and even a unilateral declaration may be registrable under Article 102.

5.3.3 Parties

A treaty or international agreement under Article 102 (other than a unilateral declaration) must be concluded between at least two parties possessing treaty-making capacity. Thus, a sovereign State or an international organization with treaty-making capacity can be a party to a treaty or international agreement.

Many international organizations established by treaty or international agreement have been specifically or implicitly conferred treaty-making capacity. Similarly, some treaties recognise the treaty-making capacity of certain international organizations such as the European Community. However, an international entity established by treaty or international agreement may not necessarily have the capacity to conclude treaties.

5.3.4 Intention to create legal obligations under international law

A treaty or international agreement must impose on the parties legal obligations binding under international law, as opposed to mere political commitments. It must be clear on the face of the instrument, whatever its form, that the parties intend to be legally bound under international law.

In one instance, the Secretariat concluded that an instrument submitted for registration, which contained a framework for creating an association of parliamentarians, was not registrable under Article 102. Accordingly, the instrument was not registered. The

Secretariat determined that the document submitted was not a treaty or international agreement among international juridical persons to create rights and obligations enforceable under international law.

5.4 Types of registration, filing and recording

5.4.1 Registration with the Secretariat

(See the *Repertory of Practice*, Article 102, paras. 43-44, 55-57 and 67-70, and article 1 of the Regulations in the annex to the General Survey.)

Under Article 102 of the *Charter of the United Nations* (see section 5.1), treaties and international agreements of which at least one party is a Member of the United Nations may be registered with the Secretariat, provided that the treaty or international agreement has entered into force between at least two of the parties and the other requirements for registration are met (article 1 of the Regulations) (see section 5.6).

As mentioned above, Members of the United Nations are obliged to register, under Article 102, all treaties and international agreements concluded after the coming into force of the *Charter of the United Nations*. Thus, the onus to register rests with States Members of the United Nations. Although this obligation is mandatory for States Members of the United Nations, it does not preclude international organizations with treaty-making capacity or non-member States from submitting for registration under Article 102 treaties or international agreements entered into with a State Member.

A specialized agency is permitted to register with the Secretariat a treaty or international agreement that is subject to registration in the following cases (article 4(2) of the Regulations):

- (a) Where the constituent instrument of the specialized agency provides for such registration;
- (b) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;
- (c) Where the specialized agency has been authorized by the treaty or agreement to effect registration.

In accordance with article 1(3) of the Regulations, which provides for registration to be effected "... by any party ..." to a treaty or international agreement, the specialized agency may also register those treaties and international agreements to which it itself is a party.

5.4.2 Filing and recording by the Secretariat

(See the *Repertory of Practice*, Article 102, paras. 71-81, and article 10 of the Regulations in the annex to the General Survey.)

The Secretariat files and records treaties or international agreements voluntarily submitted to the Secretariat and not subject to registration under Article 102 of the *Charter of the United Nations* or the Regulations. The requirements for registration outlined in section 5.6 in relation to submission of treaties and international agreements for registration apply equally to submission of treaties and international agreements for filing and recording.

Article 10 of the Regulations provides for the Secretariat to file and record the following categories of treaties and international agreements where they are not subject to registration under Article 102:

- (a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies. This covers treaties and international agreements between:
 - (i) The United Nations and non-member States;
 - (ii) The United Nations and specialized agencies or international organizations;
 - (iii) Specialized agencies and non-member States;
 - (iv) Two or more specialized agencies; and
 - (v) Specialized agencies and international organizations.

Although not expressly provided for in the Regulations, it is also the practice of the Secretariat to file and record treaties or international agreements between two or more international organizations other than the United Nations or a specialized agency.

- (b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the *Charter of the United Nations*, but which were not included in the treaty series of the League of Nations; and
- (c) Treaties or international agreements transmitted by a party not a member of the United Nations, which were entered into before or after the coming into force of the *Charter of the United Nations* and which were not included in the treaty series of the League of Nations.

5.4.3 *Ex officio registration by the United Nations*

(See the *Repertory of Practice*, Article 102, paras. 45-54, and article 4(1) of the Regulations in the annex to the General Survey.)

Article 4(a) of the Regulations provides that every treaty or international agreement that is subject to registration and to which the United Nations is a party shall be registered *ex officio*. *Ex officio* registration is the act whereby the United Nations unilaterally registers all treaties or international agreements to which it is a party. Although not expressly provided for in the Regulations, it is the practice of the Secretariat to register *ex officio* subsequent actions relating to a treaty or international agreement that the United Nations has previously registered *ex officio*.

Where the Secretary-General is the depositary of a multilateral treaty or agreement, the United Nations also registers *ex officio* the treaty or international agreement and subsequent actions to it after the relevant treaty or international agreement has entered into force (see article 4(c) of the Regulations).

5.5 Types of agreements registered or filed and recorded

5.5.1 *Multilateral treaties*

A multilateral treaty is an international agreement concluded between three or more parties, each possessing treaty-making capacity (see section 5.3.3).

5.5.2 *Bilateral treaties*

The majority of treaties registered pursuant to Article 102 of the *Charter of the United Nations* are bilateral treaties. A bilateral treaty is an international agreement concluded between two parties, each possessing treaty-making capacity (see section 5.3.3). In some situations, several States or organizations may join together to form one party. There is no standard form for a bilateral treaty.

An essential element of a bilateral treaty is that both parties have reached agreement on its content. Accordingly, reservations and declarations are generally inapplicable to bilateral agreements. However, where the parties to a bilateral treaty have made reservations or declarations, or agreed on some other interpretative document, such instrument must be registered together with the treaty submitted for registration under Article 102 of the *Charter of the United Nations* (see article 5 of the Regulations).

5.5.3 *Unilateral declarations*

(See the *Repertory of Practice*, Article 102, para. 24.)

Unilateral declarations that constitute interpretative, optional or mandatory declarations (see sections 3.6.1 and 3.6.2) may be registered with the Secretariat by virtue of their relation to a previously or simultaneously registered treaty or international agreement.

Unlike interpretative, optional and mandatory declarations, some unilateral declarations may be regarded as having the character of international agreements in their own right and are registered as such. An example is a unilateral declaration made under Article 36(2) of the *Statute of the International Court of Justice*, recognizing as compulsory the jurisdiction of the International Court of Justice. These declarations are registered *ex officio* (see section 5.4.3) when deposited with the Secretary-General.

A political statement lacking legal content and not expressing an understanding relating to the legal scope of a provision of a treaty or international agreement cannot be registered with the Secretariat.

5.5.4 *Subsequent actions, modifications and agreements*

(See the *Repertory of Practice*, Article 102, and article 2 of the Regulations in the annex to the General Survey.)

Subsequent actions effecting a change in the parties to, or the terms, scope or application of, a treaty or international agreement previously registered can be registered with the Secretariat. For example, such actions may involve ratifications, accessions, prolongations, extensions to territories, or denunciations. In the case of bilateral treaties, it is generally the party responsible for the subsequent action that registers it with the Secretariat. However, any other party to such agreement may assume this role. In the case

of a multilateral treaty or agreement, the entity performing the depositary functions usually effects registration of such actions (see section 5.4.3 in relation to treaties or international agreements deposited with the Secretary-General).

Where a new instrument modifies the scope or application of a parent agreement, such new instrument must also be registered with the Secretariat. It is clear from article 2 of the Regulations that for the subsequent treaty or international agreement to be registered, the prior treaty or international agreement to which it relates must first be registered. In order to maintain organizational continuity, the registration number that has been assigned for the registration of the parent treaty or international agreement is also assigned to the subsequent treaty or international agreement.

5.6 Requirements for registration

(See the *Repertory of Practice*, Article 102, and article 5 of the Regulations in the annex to the General Survey.)

An instrument submitted for registration must meet the following general requirements:

1. Treaty or international agreement within the meaning of Article 102
As mentioned above, the Secretariat reviews each document submitted for registration to ensure that it falls within the meaning of a treaty or international agreement under Article 102 (see section 5.3).
2. Certifying statement
(See the model certifying statement in annex 7.)
Article 5 of the Regulations requires that a party or specialized agency registering a treaty or international agreement certify that “the text is a true and complete copy thereof and includes all reservations made by parties thereto”. The certified copy must include:
 - (a) The title of the agreement;
 - (b) The place and date of conclusion;
 - (c) The date and method of entry into force for each party; and
 - (d) The authentic languages in which the agreement was drawn up.

When reviewing the certifying statement, the Secretariat requires that all enclosures such as protocols, exchanges of notes, authentic texts, annexes, etc., mentioned in the text of the treaty or international agreement as forming a part thereof, are appended to the copy transmitted for registration. The Secretariat brings the omission of any such enclosures to the attention of the registering party and defers action on the treaty or international agreement until the material is complete.

3. Copy of treaty or international agreement
Parties must submit ONE certified true and complete copy of **all** authentic text(s), **and** TWO additional copies **or** ONE electronic copy to the Secretariat for registration purposes. The hard copy version(s) should be capable of being reproduced in the United Nations *Treaty Series*.

Further to General Assembly Resolution 53/100, the Secretariat strongly encourages parties to submit, in addition to a certified true copy on paper, an electronic copy, i.e., on computer diskette, CD or as an attachment by e-mail, of the submitted documentation. This assists greatly in the registration and publication process. The preferred format for a treaty or international agreement submitted on diskette is *Word Perfect 6.1 for Windows*, as this is the system that is used in the publication of the United Nations *Treaty Series*. Treaties may also be submitted in *Microsoft Word for Windows* or as a text file (the generic ASCII text format for saving documents). The preferred formats for a treaty or international agreement submitted by e-mail are *Word*, *WordPerfect*, or image (tiff) format. All electronic submissions by e-mail should be directed to TreatyRegistration@un.org.

Member States and international organizations are also reminded of the resolutions of the General Assembly, initially adopted on 12 December 1950 (A/RES/482 (V)) and most recently repeated on 21 January 2000 (A/RES/54/28), urging States to provide English and/or French translations of treaties submitted for registration with the United Nations Secretariat where feasible. Courtesy translations in English and French, or any of the other official languages of the United Nations, greatly assist in the timely and cost-effective publication of the United Nations *Treaty Series*.

4. Date of entry into force
The documentation submitted must specify the date of entry into force of the treaty or international agreement. A treaty or international agreement will only be registered after it has entered into force.
5. Method of entry into force
The documentation submitted must specify the method of entry into force of the treaty or international agreement. This is normally provided in the text of the treaty or international agreement.
6. Place and date of conclusion
The documentation submitted must specify the place and date of conclusion of the treaty or international agreement. This is generally inserted on the last page immediately above the signature. The names of the signatories should be specified unless they are in typed form as part of the signature block.

5.7 Outcome of registration or filing and recording

5.7.1 Database and record

(See the *Repertory of Practice*, Article 102, and article 8 of the Regulations in the annex to the General Survey.)

The database of instruments registered and the record of instruments filed and recorded are kept in English and French. The database and record contain the following information, in respect of each treaty or international agreement:

- (a) Date of receipt of the instrument by the Secretariat of the United Nations;
- (b) Registration number or filing and recording number;
- (c) Title of the instrument;
- (d) Names of the parties;
- (e) Date and place of conclusion;
- (f) Date of entry into force;
- (g) Existence of any attachments, including reservations and declarations;
- (h) Languages in which it was drawn up;
- (i) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (j) Date of registration or filing and recording.

5.7.2 Date of effect of registration

(See the *Repertory of Practice*, Article 102, and article 6 of the Regulations in the annex to the General Survey.)

Under article 6 of the Regulations, the date the Secretariat of the United Nations receives all the specified information relating to the treaty or international agreement is deemed to be the date of registration. A treaty or international agreement registered *ex officio* by the United Nations is deemed to be registered on the date on which the treaty or international agreement comes into force between two or more of the parties thereto. However, if the Secretariat receives the treaty or international agreement after the date of its entry into force, the date of registration is the first available date of the month of receipt.

In accordance with article 1 of the Regulations, registration is effected by a party and not by the Secretariat. The Secretariat makes every effort to complete registration on the date of submission. However, due to certain factors including volume of instruments deposited, need for translations, etc., a certain amount of time may elapse between the receipt of a treaty or international agreement and its inscription in the database.

Registering parties have an important obligation to ensure that documents submitted for registration are complete and accurate in order to avoid delays in the registration and publication processes. In cases where submissions are incomplete or defective, the date of registration of the treaty or international agreement is deemed to be the date of receipt of all of the required documentation and information and not the date of the original submission.

5.7.3 Certificate of registration

(See the *Repertory of Practice*, Article 102, and article 7 of the Regulations in the annex to the General Survey.)

Once a treaty or international agreement is registered, the Secretariat issues to the registering party a certificate of registration signed by the Secretary-General or a representative of the Secretary-General. Upon request, the Secretariat will provide such a certificate to all signatories and parties to the treaty or international agreement. According to established practice, the Secretariat does not issue certificates of registration

in respect of treaties or international agreements that are registered *ex officio* (see section 5.4.3) or filed and recorded (see section 5.4.2).

5.7.4 Publication

(See the *Repertory of Practice*, Article 102, paras. 82-107, and articles 12-14 of the Regulations in the annex to the General Survey.)

Monthly Statement

(See the *Repertory of Practice*, Article 102, and articles 13-14 of the Regulations in the annex to the General Survey.)

Each month, the Secretariat publishes a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month (see article 13 of the Regulations). The Monthly Statement does not contain the texts of treaties or international agreements, but provides certain attributes, in English and French, of the treaties or international agreements registered or filed and recorded, such as the:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Existence of any attachments, including reservations and declarations;
- (g) Languages in which it was drawn up;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (i) Date of registration or filing and recording.

The Monthly Statement is divided into two parts. Part I lists the treaties registered. Part II lists the treaties filed and recorded. In addition, the Monthly Statement contains annexes A, B, and C. Annexes A and B are devoted to certified statements (e.g., ratifications or accessions) and subsequent agreements relating to treaties or international agreements registered or filed and recorded. Annex C lists subsequent actions relating to treaties or international agreements registered with the League of Nations.

United Nations Treaty Series

Article 12 of the Regulations provides that the Secretariat shall publish as soon as possible, in a single series every treaty or international agreement that is registered, or filed and recorded. Treaties are published in the United Nations *Treaty Series* in their authentic languages, followed by translations in English and French, as required. Subsequent actions are published in the same manner. The Secretariat requires clear copies of treaties and international agreements for publication purposes.

Limited publication

Originally, article 12 of the Regulations required the Secretariat to publish in full all treaties and international agreements registered or filed and recorded with the Secretariat. The General Assembly modified this framework in its resolution 33/141 of 19 December 1978 in light of the substantial increase in treaty making on the international plane and the publication backlog that existed at that time (*Report of the Secretary-General*, document A/33/258, 2 October 1978, paras. 3 to 7).

According to article 12(2) of the Regulations, as amended in 1978, the Secretariat is no longer required to publish *in extenso*, i.e., in full, bilateral treaties falling within one of the following categories:

- (a) Assistance and co-operation agreements of limited scope concerning financial, commercial, administrative or technical matters;
- (b) Agreements relating to the organization of conferences, seminars or meetings;
- (c) Agreements that are to be published otherwise than in the [United Nations *Treaty Series*] by the United Nations Secretariat or by a specialized or related agency.

The publication backlog continued to grow, however, and in 1996 stood at 11 years, i.e., an instrument registered in 1987 was scheduled to be published by 1998 (this backlog has been reduced to approximately 2 ½ years as at 2001). As a result, in 1997, the General Assembly extended the limited publication policy to multilateral treaties, so that the Secretariat now has discretion not to publish *in extenso* bilateral and multilateral treaties or agreements falling within one of the categories listed under article 12(2)(a) to (c) (General Assembly Resolution A/RES/52/153 of 15 December 1997):

The General Assembly...

7. *Invites* the Secretary-General to apply the provisions of article 12, paragraph 2, of the Regulations to give effect to Article 102 of the Charter of the United Nations to multilateral treaties falling within the terms of article 12, paragraph 2 (a) to (c); ...

Lengthy lists of products attached to bilateral or multilateral trade agreements also fall within the limited publication policy. In addition, agreements of the European Union are published only in English and French.

Today, approximately 25 per cent of the treaties registered are subject to the limited publication policy. An example of a multilateral treaty or agreement falling under the extended scope of article 12(2) is the *Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, 1958*. Due to the highly technical nature of this agreement, which contains over 100 annexed regulations, all of which are subject to amendments on a regular basis, the Secretariat does not publish this agreement in full. However, it is available on the United Nations Optical Disk System and is published by the United Nations Economic Commission for Europe (document E/ECE/324 – E/ECE/TRANS/505; see <<http://www.unece.org>>).

In determining whether or not a treaty or international agreement should be published *in extenso*, the Secretariat is guided by the letter and spirit of the *Charter of the United Nations* and article 12(3) of the Regulations. The primary criterion in making this determination is the requirement that the Secretariat shall:

... duly take into account, *inter alia*, the practical value that might accrue from *in extenso* publication.

Under article 12(3) of the Regulations, the Secretariat may reverse a decision not to publish *in extenso* at any time.

Where the Secretariat exercises the limited publication option in relation to treaties or international agreements registered or filed and recorded, their publication is limited to the following information in accordance with article 12(5) of the Regulations:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Duration of the treaty or international agreement (where appropriate);
- (g) Languages in which it was concluded;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording;
- (i) Date of registration or filing and recording; and
- (j) Where appropriate, reference to publications in which the complete text of the treaty or international agreement is reproduced.

Treaties and international agreements that the Secretariat does not publish *in extenso* are identified as such in the Monthly Statement with an asterisk.

6 CONTACTS WITH THE TREATY SECTION: PROCEDURAL INFORMATION

6.1 General information

6.1.1 *Contacting the Treaty Section*

| | |
|-------------------------|--|
| Treaty Section | Telephone: +1 212 963 5047 |
| Office of Legal Affairs | Facsimile: +1 212 963 3693 |
| United Nations | E-mail (general): treaty@un.org |
| New York, NY 10017 | (registration): TreatyRegistration@un.org |
| USA | Website: < http://untreaty.un.org > |

6.1.2 *Functions of the Treaty Section*

As mentioned in the Introduction to this Handbook, the Treaty Section of the Office of Legal Affairs of the United Nations discharges the responsibility for the depositary functions of the Secretary-General of the United Nations and the registration and publication of treaties submitted to the Secretariat. This section sets out some steps to follow in contacting the Treaty Section in relation to certain treaty actions.

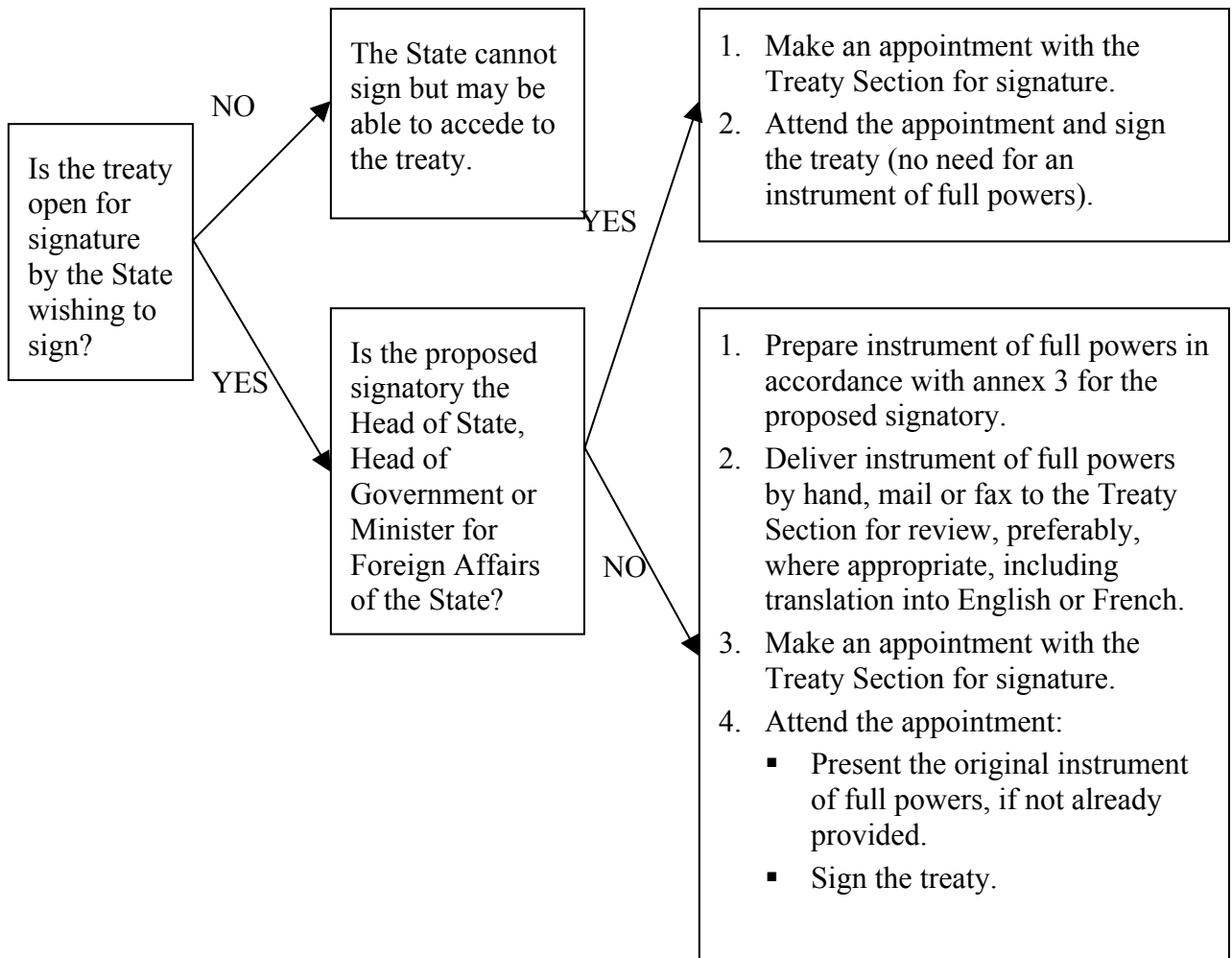
6.1.3 *Delivery of documents*

Most treaty actions become effective only upon deposit of the relevant instrument with the Treaty Section. States are advised to deliver instruments directly to the Treaty Section to ensure they are promptly processed. The date of deposit is normally recorded as that on which the instrument is received at Headquarters, unless the instrument is subsequently deemed unacceptable. Persons who are merely delivering instruments (rather than, for example, signing a treaty) do not require full powers.

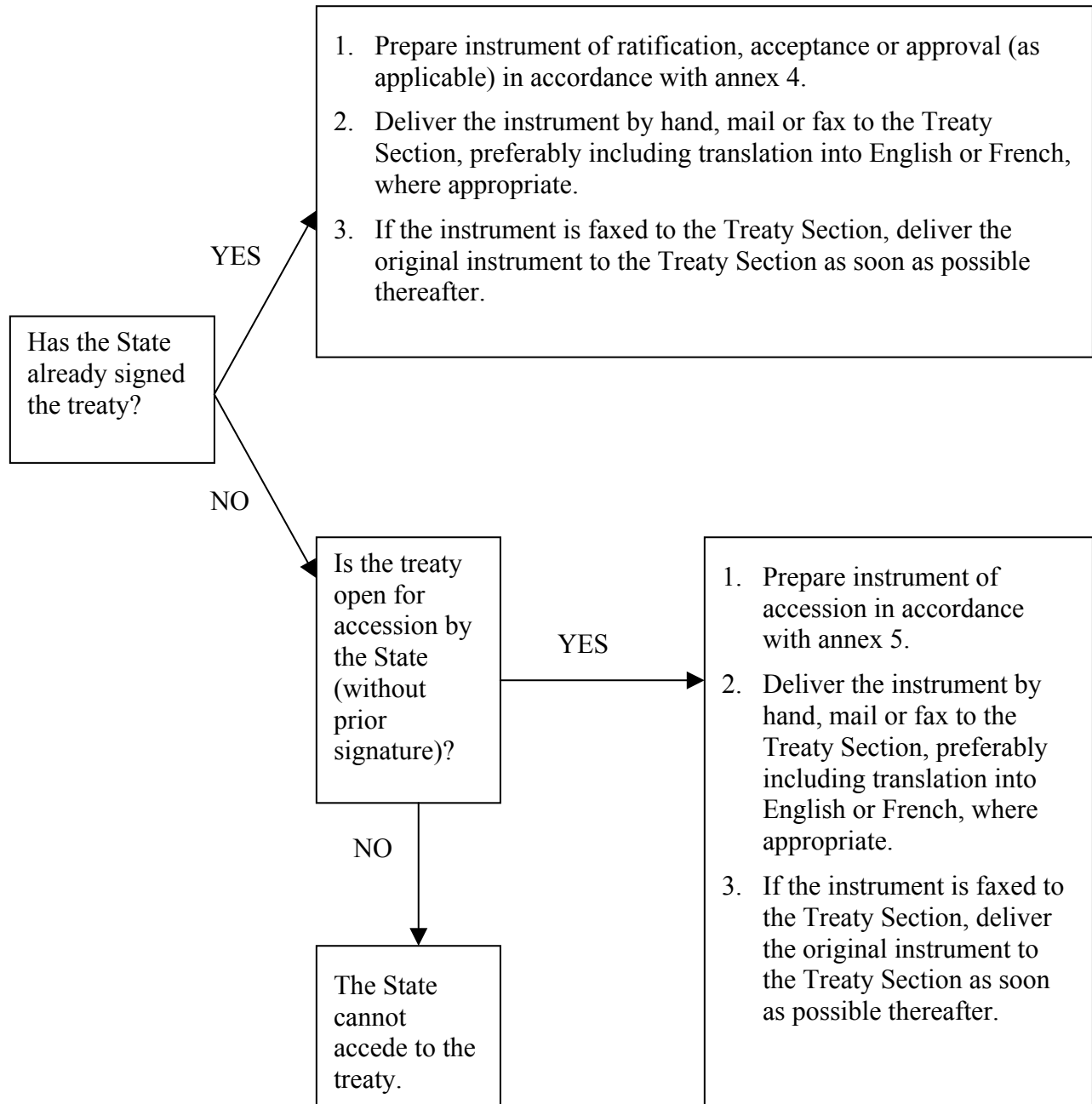
6.1.4 *Translations*

States are encouraged to provide courtesy translations, where feasible, in English and/or French of any instruments in other languages that are submitted to the Treaty Section. This facilitates the prompt processing of the relevant actions.

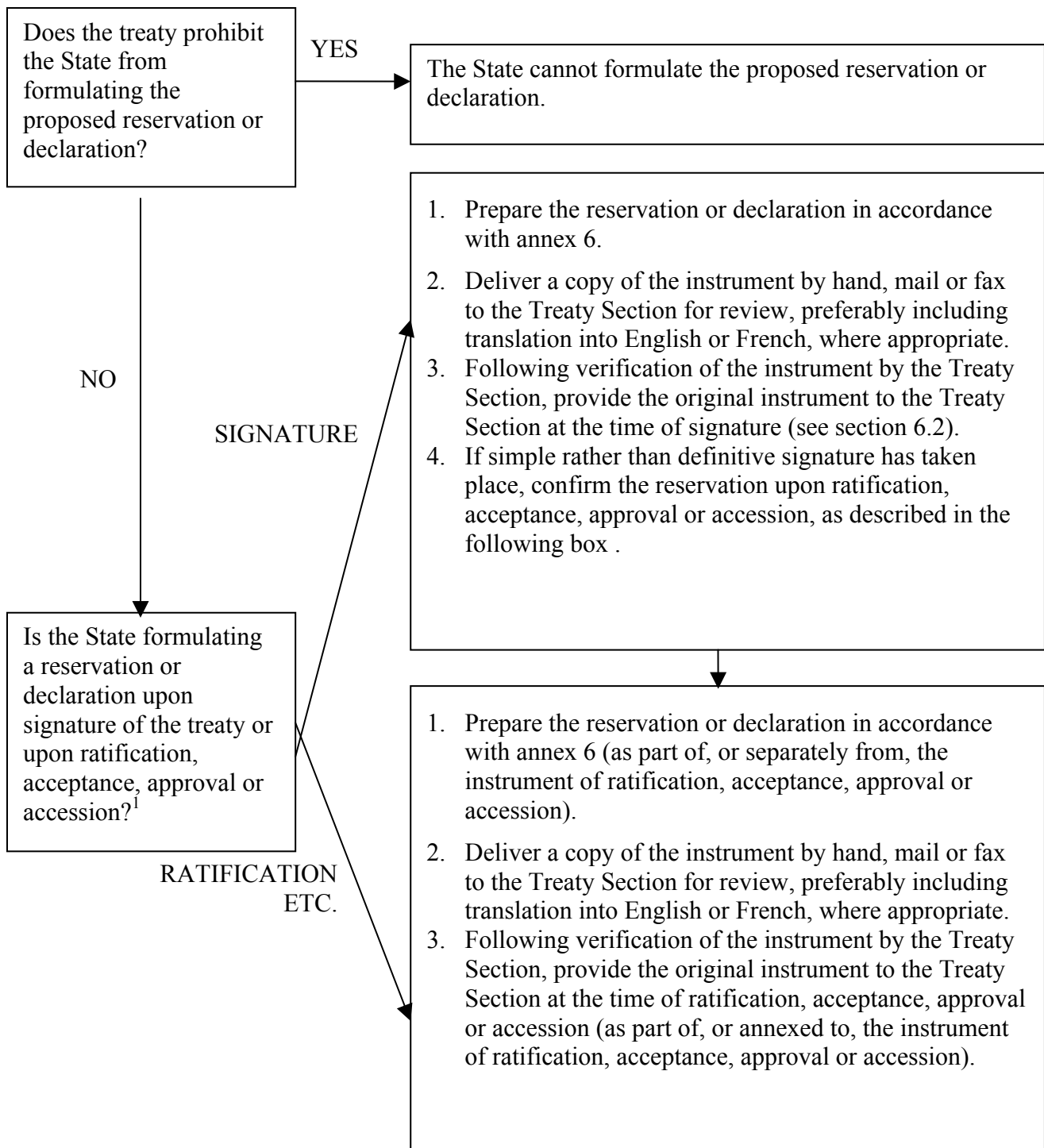
6.2 Signing a multilateral treaty



6.3 Ratifying, accepting, approving or acceding to a multilateral treaty



6.4 Making a reservation or declaration to a multilateral treaty

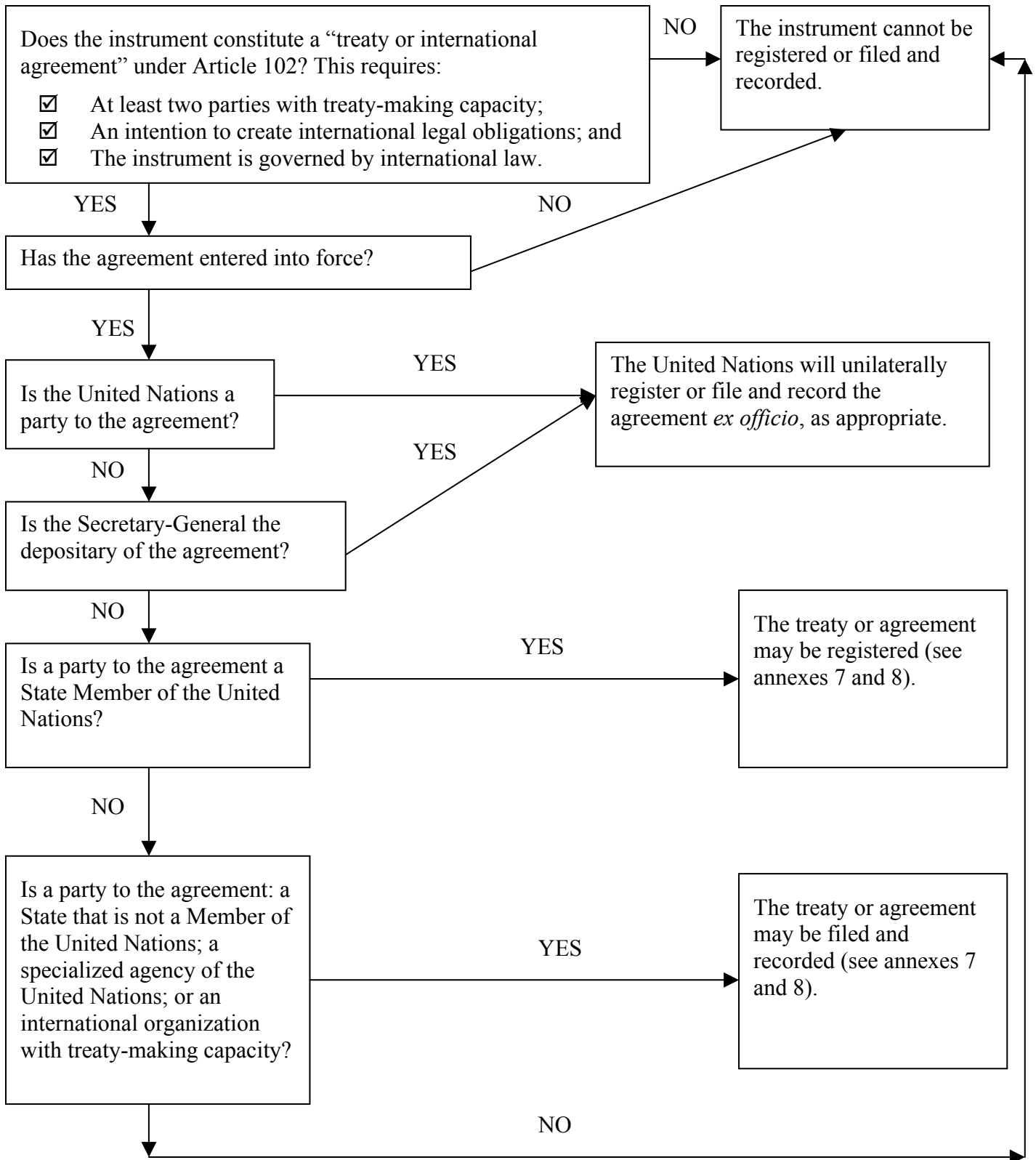


¹ The Secretary-General may accept reservations or declarations other than upon signature, ratification, acceptance, approval or accession on exceptional occasions.

6.5 Depositing a multilateral treaty with the Secretary-General

1. Well before the treaty is adopted, contact the Treaty Section, including on the question of the Secretary-General acting as depositary and on the final clauses.
2. Deliver a copy of the treaty (in particular, the draft final clauses of the treaty) to the Treaty Section for review, in the authentic languages of the treaty.
3. Following adoption, deposit the original treaty in all authentic languages with the Treaty Section. In order for the Treaty Section to prepare authentic texts and certified true copies in time for signature, provide camera-ready copies of the treaty as adopted (hard copy and electronic format – Microsoft Word 2000).

6.6 Registering or filing and recording a treaty with the Secretariat



ANNEX 1 – NOTE VERBALE FROM THE LEGAL COUNSEL (FULL POWERS), 1998

REFERENCE: LA 41 TR/221/1

The Legal Counsel presents his compliments to the Permanent Representatives to the United Nations in New York and has the honour to communicate the following in relation to full powers for the signing of treaties deposited with the Secretary-General:

It has been noted recently that some national representatives have sought to sign treaties deposited with the Secretary-General without full powers, which meet the requirements under treaty law and practice. It is reminded that the Secretary-General's consistent practice relating to full powers has been as follows:

- Proper full powers are required by all persons seeking to sign a treaty deposited with the Secretary-General or to make a reservation upon signature, except Heads of State or Government or Foreign Ministers.
- Full powers should:
 - Bear the signature of the Head of State or Government or the Foreign Minister;
 - Specify clearly the title of the instrument to be signed;
 - State the full name of the person authorized to sign the instrument concerned.

As stated above, full powers are not required where the Head of State or Government or the Foreign Minister signs in person. Furthermore, where general full powers have been issued to a person and have been deposited with the Secretariat in advance, specific full powers are not required.

It is advised that whenever possible full powers should be submitted for verification to the Treaty Section of the United Nations in advance of the intended date of signature.

Further information on full powers could be obtained from the publication "*Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*" (ST/LEG/8).

A copy of a model instrument of full powers is attached for your information.

30 September 1998

H.C.

ANNEX 2 – NOTE VERBALE FROM THE LEGAL COUNSEL (MODIFICATION OF RESERVATIONS), 2000

REFERENCE: LA 41 TR/221 (23-1)

The Legal Counsel of the United Nations presents his compliments to the Permanent Representatives to the United Nations and has the honour to communicate the following relating to the practice followed by the Secretary-General as depositary in respect of communications from States, which seek to modify their existing reservations to multilateral treaties deposited with the Secretary-General or which may be understood to seek to do so.

The current practice of the Secretary-General is to stipulate a period of 90 days as the length of time within which parties must object to a communication of this nature if they wish the Secretary-General not to accept that communication in deposit.

The Legal Counsel notes in this regard that 90 days is the period, which has been traditionally set by the Secretary-General in his capacity as depositary, for the purpose of assuming tacit consent to a juridical act or proposition.

However, the Secretary-General's attention has been drawn to the complex questions of law and policy, which may fail to be considered by the parties to a treaty, and the necessity that might arise for consultations among them, in deciding what, if any, action should be taken in respect of such a communication. It is his understanding that the 90-day period may be inadequate for this purpose.

Mindful of these considerations, the Legal Counsel is pleased to advise the Permanent Representative that the Secretary-General as depositary intends henceforth to stipulate a period of twelve months as that within which parties must inform him if they wish him not to accept in deposit a communication by a State party which seeks to modify, or may be understood to seek to modify, an existing reservation to a treaty.

In coming to this decision, the Secretary-General has been mindful of the provisions of the Convention on the Law of Treaties, done at Vienna on 23 May 1969. Since a communication, which seeks to modify an existing reservation, is aimed at creating new exemptions from, or modifications of, the legal effects of certain provisions of the treaty in question in their application to the State concerned, such a communication possesses the nature of a new reservation. In determining the period within which parties must inform him if they wish him not to accept in deposit a communication, which is or might be understood to be of such a character, the Secretary-General has accordingly been guided by Article

20, paragraph 5, of the Convention, which indicates a period of twelve months to be appropriate for Governments to analyse and assess a reservation that has been formulated by another State and to decide upon what action, if any, should be taken in respect of it.

By the same token, the Secretary-General as depositary will in future, when circulating a reservation which a State may seek to formulate subsequently to having established its consent to be bound by a treaty, stipulate twelve months as the period within which other parties must inform him if they do not wish him to consider them to have accepted that reservation.

The Legal Counsel of the United Nations avails himself of this opportunity to renew to the Permanent Representatives to the United Nations the assurances of his highest consideration.

4 April 2000

H.C.

ANNEX 3 – MODEL INSTRUMENT OF FULL POWERS

(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)

FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORISE [name and title] to [sign *, ratify, denounce, effect the following declaration in respect of, etc.] the [title and date of treaty, convention, agreement, etc.] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]

* Subject to the provisions of the treaty, one of the following alternatives is to be chosen: [subject to ratification] or [without reservation as to ratification]. Reservations made upon signature must be authorised by the full powers granted to the signatory.

**ANNEX 4 – MODEL INSTRUMENT OF RATIFICATION,
ACCEPTANCE OR APPROVAL**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

AND WHEREAS the said [treaty, convention, agreement, etc.] has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned [treaty, convention, agreement, etc.], [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

ANNEX 5 – MODEL INSTRUMENT OF ACCESSION

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

ACCESSION

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]

**ANNEX 6 – MODEL INSTRUMENTS OF
RESERVATION/DECLARATION**

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

[RESERVATION / DECLARATION]

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY DECLARE that the Government of [name of State] makes the following [reservation / declaration] in relation to article(s) [----] of the [title and date of adoption of the treaty, convention, agreement, etc.]:

[Substance of reservation / declaration]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

MODIFICATION OF RESERVATION

WHEREAS the Government of [name of State] [ratified, approved, accepted, acceded to] the [title and date of adoption of the treaty, convention, agreement, etc.] on [date],

AND WHEREAS, upon [ratification, approval, acceptance of / accession to] the [treaty, convention, agreement, etc.], the Government of [name of State] made (a) reservation(s) to article(s) [----] of the [treaty, convention, agreement, etc.],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs], declare that the Government of [name of State], having reviewed the said reservation(s), hereby modifies the same as follows:

[Substance of modification]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]

**(To be signed by the Head of State, Head of Government
or Minister for Foreign Affairs)**

WITHDRAWAL OF RESERVATION (S)

WHEREAS the Government of [name of State] [ratified, approved, accepted, acceded to] the [title and date of adoption of the treaty, convention, agreement, etc.] on [date],

AND WHEREAS, upon [ratification, approval, acceptance of / accession to] the [treaty, convention, agreement, etc.], the Government of [name of State] made (a) reservation(s) to article(s) [----] of the [treaty, convention, agreement, etc.],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs], declare that the Government of [name of State], having reviewed the said reservation(s), hereby withdraws the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]

ANNEX 7 – MODEL CERTIFYING STATEMENT FOR REGISTRATION OR FILING AND RECORDING

(Model for the certifying statement required under the General Assembly
Regulations to give effect to Article 102 of the Charter)¹

CERTIFYING STATEMENT

I, THE UNDERSIGNED [name of the authority], hereby certify that the attached text is a true and complete copy of [title of the agreement, name of the Parties, date and place of conclusion], that [it includes all reservations made by Signatories or Parties thereto / no reservations or declarations or objections were made by the Signatories or Parties thereto], and that it was concluded in the following languages: [...]. *I further certify that the additional copy of this Agreement contained on the diskette is a true and complete copy of [title of the agreement].*²

I FURTHER CERTIFY that the Agreement came into force on [date] by [method of entry into force], in accordance with [article or provision in the agreement], and that it was signed by [...] and [...].³

[Place and date of signature of certifying statement]

[Signature and title of certifying authority]

¹ For the text of the Regulations adopted by General Assembly resolution 97(I) of 14 December 1946 and later amended by General Assembly resolutions 364B(IV) of 1 December 1949, 482(V) of 12 December 1950 and 33/141 of 19 December 1978, see United Nations *Treaty Series*, volume 859/860, p. VIII, 1973. See also General Assembly resolution 52/153 of 15 December 1997; *Repertory of Practice of United Nations Organs* (volume V, New York, 1955, Articles 92-111, and Supplements 1 to 6).

² The language in italics must be included when additional copies of a treaty are provided on a diskette.

³ For multilateral agreements, a complete list of signatories should be provided.

ANNEX 8 – CHECKLIST FOR REGISTRATION

Requirements for submission of treaties and international agreements for registration and publication in accordance with Article 102 of the *Charter of the United Nations*:

| DOCUMENTATION / INFORMATION TO BE PROVIDED | FORMAT / TYPE OF INFORMATION |
|--|---|
| 1. Treaty / Agreement | <ul style="list-style-type: none"> • ONE certified true and complete copy of all authentic text(s), and • TWO additional copies or ONE electronic copy (on diskette) |
| 2. All attachments (annexes, minutes, procès-verbaux, etc.) | Same as (1) above |
| 3. Text of reservations, declarations, objections | Same as (1) above |
| 4. Translations of the Agreement and all attachments into English and/or French (if available) | One paper copy and one electronic copy, if available, where necessary |
| 5. Title of Treaty / Agreement | If not printed as part of the text (e.g., for exchange of notes) |
| 6. Names of signatories | If not appearing in typed form as part of signature block |
| 7. Date of signature | If not clear from the text |
| 8. Place of signature | If not clear from the text |
| 9. Date of entry into force | In accordance with entry into force provisions |
| 10. Method of entry into force | Signature, ratification, approval, accession, etc., including : <ul style="list-style-type: none"> • In the case of a bilateral agreement, date and place of exchange of the instruments of ratification or notification; or • In the case of a multilateral agreement, date and nature of the instruments deposited by each Contracting Party with the Depositary |

GLOSSARY

This section provides a guide to terms commonly used in relation to treaties and employed in the practice of the Secretary-General as depositary of multilateral treaties, as well as in the Secretariat's registration function. Where applicable, a reference to relevant provisions of the Vienna Convention 1969 is included.

- acceptance** See ratification.
- accession** Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession" (see annex 5). Accession has the same legal effect as ratification, acceptance or approval. The conditions under which accession may occur and the procedure involved depend on the provisions of the relevant treaty. Accession is generally employed by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. However, many modern multilateral treaties provide for accession even during the period that the treaty is open for signature. See articles 2(1)(b) and 15 of the Vienna Convention 1969.
- adoption** Adoption is the formal act by which negotiating parties establish the form and content of a treaty. The treaty is adopted through a specific act expressing the will of the States and the international organizations participating in the negotiation of that treaty, e.g., by voting on the text, initialling, signing, etc. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.
- Treaties that are negotiated within an international organization are usually adopted by resolution of the representative organ of that organization. For example, treaties negotiated under the auspices of the United Nations, or any of its bodies, are adopted by a resolution of the General Assembly of the United Nations.
- Where an international conference is specifically convened for the purpose of adopting a treaty, the treaty can be adopted by a vote of two thirds of the States present and voting, unless they have decided by the same majority to apply a different rule.
- See article 9 of the Vienna Convention 1969.
- amendment** Amendment, in the context of treaty law, means the formal alteration of the provisions of a treaty by its parties. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Multilateral treaties typically provide specifically for their amendment. In the absence of such provisions, the adoption and entry into force of amendments require the consent of all the parties. See articles 39 and 40 of the Vienna Convention 1969.

- approval** See ratification.
- authentication** Authentication is the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, its provisions cannot be modified except by formal amendment. If procedures for authentication have not been specifically agreed, the treaty will usually be authenticated by signature, or initialling, by the representatives of those States. It is this authenticated text that the depositary uses to establish the original text. See article 10 of the Vienna Convention 1969.
- authentic language***
A treaty typically specifies its authentic languages – the languages in which the meaning of its provisions is to be determined.
- authentic or authenticated text***
The authentic or authenticated text of a treaty is the version of the treaty that has been authenticated by the parties.
- bilateral treaty** See treaty.
- certified true copy** ***certified true copy for depositary purposes***
A certified true copy for depositary purposes means an accurate duplication of an original treaty, prepared in all authentic languages, and certified as such by the depositary of the treaty. The Secretary-General of the United Nations circulates certified true copies of each treaty deposited with the Secretary-General to all States and entities that may become parties to the treaty. For reasons of economy, the Secretary-General, as depositary, normally provides only two certified true copies to each prospective participant in the treaty. States are expected to make any additional copies required to fulfil their domestic needs. See article 77(1)(b) of the Vienna Convention 1969.
- certified true copy for registration purposes***
A certified true copy for registration purposes means an accurate duplication of a treaty submitted to the Secretariat of the United Nations for registration. The registering party must certify that the text submitted is a true and complete copy of the treaty and that it includes all reservations made by the parties. The date and place of adoption, the date and the method whereby the treaty has come into force, and the authentic languages must be included. See article 5 of the Regulations.
- certifying statement** A certifying statement is the statement accompanying the certified true copy of a treaty or a treaty action for registration purposes, certifying that it is such a copy (see section 5.6 and annex 7).
- C.N.** See depositary notification.

| | |
|----------------------------|---|
| consent to be bound | A State expresses its consent to be bound by a treaty under international law by some formal act, i.e., definitive signature, ratification, acceptance, approval or accession. The treaty normally specifies the act or acts by which a State may express its consent to be bound. See articles 11-18 of the Vienna Convention 1969. |
| contracting State | A contracting State is a State that has expressed its consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for that State. See article 2(1)(f) of the Vienna Convention 1969. |
| convention | Whereas in the last century the term “convention” was regularly employed for bilateral agreements, it is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are entitled conventions. The same holds true for instruments adopted by an organ of an international organization. |
| correction | <p>Correction of a treaty is the remedying of an error in its text. If, after the authentication of a text, the signatory and contracting States agree that an error exists, those States can correct the error by:</p> <ul style="list-style-type: none"> (a) Initialling the corrected treaty text; (b) Executing or exchanging an instrument containing the correction; or (c) Executing the corrected text of the whole treaty by the same procedure by which the original text was executed. <p>If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting States and States parties. In the practice of the United Nations, the Secretary-General, as depositary, informs all States of the error and the proposal to correct it. If, on the expiry of a specified time limit, no signatory or contracting State or State party objects, the Secretary-General circulates a procès-verbal of rectification and causes the corrections to be effected in the authentic text(s) <i>ab initio</i>. States have 90 days to object to a proposed correction. This period can be shortened if necessary.</p> <p>See article 79 of the Vienna Convention 1969.</p> |
| credentials | Credentials take the form of a document issued by a State authorising a delegate or delegation of that State to attend a conference, including, where necessary, for the purpose of negotiating and adopting the text of a treaty. A State may also issue credentials to enable signature of the Final Act of a conference. Credentials are distinct from full powers. Credentials permit a delegate or delegation to adopt the text of a treaty and/or sign the Final Act, while full powers permit a person to undertake any given treaty action (in particular, signature of |

- treaties).
- date of effect** The date of effect of a treaty action (such as signature, ratification, acceptance of an amendment, etc.), in the depositary practice of the Secretary-General of the United Nations, is the time when the action is undertaken with the depositary. For example, the date of effect of an instrument of ratification is the date on which the relevant instrument is deposited with the Secretary-General.
- The date of effect of a treaty action by a State or an international organization is not necessarily the date that action enters into force for that State or international organization. Multilateral agreements often provide for their entry into force for a State or international organization after the lapse of a certain period of time following the date of effect.
- declaration** (See annex 6.)
- interpretative declaration*
- An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.
- The Secretary-General, as depositary, pays specific attention to declarations to ensure that they do not amount to reservations. Usually, declarations are made at the time of signature or at the time of deposit of an instrument of ratification, acceptance, approval or accession. Political declarations usually do not fall into this category as they contain only political sentiments and do not seek to express a view on legal rights and obligations under a treaty.
- mandatory declaration*
- A mandatory declaration is a declaration specifically required by the treaty itself. Unlike an interpretative declaration, a mandatory declaration is binding on the State making it.
- optional declaration*
- An optional declaration is a declaration that a treaty specifically provides for, but does not require. Unlike an interpretative declaration, an optional declaration is binding on the State making it.
- depositary** The depositary of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969. The Secretary-General, as depositary, accepts notifications and documents related to treaties deposited with the Secretary-General, examines whether all formal requirements are met, deposits them, registers them subject to Article 102 of the *Charter of the United Nations* and notifies all relevant acts to the parties concerned. Some treaties describe depositary functions. This is considered unnecessary

in view of the detailed provision of article 77 of the Vienna Convention 1969.

A depositary can be one or more States, an international organization, or the chief administrative officer of the organization, such as the Secretary-General of the United Nations. The Secretary-General does not share depositary functions with any other depositary. In certain areas, such as dealing with reservations, amendments and interpretation, the Secretary-General's depositary practice, which has developed since the establishment of the United Nations, has evolved further since the conclusion of the Vienna Convention 1969. The Secretary-General is not obliged to accept the role of depositary, especially for treaties negotiated outside the auspices of the United Nations. It is the usual practice to consult the Treaty Section prior to designating the Secretary-General as depositary. The Secretary-General, at present, is the depositary for over 500 multilateral treaties. See articles 76 and 77 of the Vienna Convention 1969.

**depositary
notification
(C.N.)**

A depositary notification (sometimes referred to as a C.N. – an abbreviation for circular notification) is a formal notice that the Secretary-General sends to all Member States, non-member States, the specialized agencies of the United Nations, and the relevant secretariats, organizations and United Nations offices, as depositary of a particular treaty. The notification provides information on that treaty, including actions undertaken. Such notifications are typically distributed by e-mail on the day that they are processed. Notifications with bulky attachments are transmitted in paper form.

entry into force *definitive entry into force*

Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. This may be a date specified in the treaty or a date on which a specified number of ratifications, approvals, acceptances or accessions have been deposited with the depositary. The date when a treaty deposited with the Secretary-General enters into force is determined in accordance with the treaty provisions.

entry into force for a State

A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force. See article 24 of the Vienna Convention 1969.

provisional entry into force

Provisional entry into force may be allowed by the terms of a treaty, for example, in commodity agreements. Provisional entry into force of a treaty may also occur when a number of parties to a treaty that has

not yet entered into force decide to apply the treaty as if it had entered into force. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner. See article 25(1) of the Vienna Convention 1969.

exchange of letters or notes

An exchange of letters or notes may embody a bilateral treaty commitment. The basic characteristic of this procedure is that the signatures of both parties appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of these letters or notes, each of the parties retaining one letter or note signed by the representative of the other party. In practice, the second letter or note (usually the letter or note in response) will reproduce the text of the first. In a bilateral treaty, the parties may also exchange letters or notes to indicate that they have completed all domestic procedures necessary to implement the treaty. See article 13 of the Vienna Convention 1969.

filing and recording

Filing and recording is the procedure by which the Secretariat records certain treaties that are not subject to registration under Article 102 of the *Charter of the United Nations*.

Final Act

A Final Act is a document summarising the proceedings of a diplomatic conference. It is normally the formal act by which the negotiating parties bring the conference to a conclusion. It is usually part of the documentation arising from the conference, including the treaty, the resolutions and interpretative declarations made by participating States. There is no obligation to sign the Final Act, but signature may permit participation in subsequent mechanisms arising from the conference, such as preparatory committees. Signing the Final Act does not normally create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.

final clauses

Final clauses are provisions typically found at the end of a treaty, dealing with such topics as signature, ratification, acceptance, approval, accession, denunciation, amendment, reservation, entry into force, settlement of disputes, depositary matters and authentic texts.

In the case of multilateral treaties to be deposited with the Secretary-General, parties should submit for review draft final clauses to the Treaty Section well in advance of the adoption of the treaty (see section 6.5).

full powers

instrument of full powers

Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given treaty actions (see annex 3).

The Secretary-General's practice in relation to full powers may differ in certain respects from that of other depositaries. The Secretary-

| | |
|---|---|
| | <p>General does not accept full powers transmitted by telex or powers that are not signed.</p> <p>The Head of State, Head of Government and Minister for Foreign Affairs are considered as representing their State for the purpose of all acts relating to the signature of, and the consent to be bound by, a treaty. Accordingly, they need not present full powers for those purposes.</p> <p>See articles 2(1)(c) and 7 of the Vienna Convention 1969.</p> <p><i>instrument of general full powers</i></p> <p>An instrument of general full powers authorises a named representative to execute certain treaty actions, such as signatures, relating to treaties of a certain kind (for example, all treaties adopted under the auspices of a particular organization).</p> |
| interpretative declaration | See declaration. |
| mandatory declaration | See declaration. |
| memorandum of understanding (M.O.U.) | <p>The term memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. An M.O.U. typically consists of a single instrument and is entered into among States and/or international organizations. The United Nations usually concludes M.O.U.s with Member States in order to organize its peacekeeping operations or to arrange United Nations conferences. The United Nations also concludes M.O.U.s regarding cooperation with other international organizations. The United Nations considers M.O.U.s to be binding and registers them if submitted by a party or if the United Nations is a party.</p> |
| modification | <p>Modification, in the context of treaty law, refers to the variation of certain provisions of a treaty only as between particular parties to that treaty. As between other parties, the original provisions apply. If a treaty is silent as to modifications, they are allowed only to the extent that they do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and purpose of the treaty. See article 41 of the Vienna Convention 1969.</p> |
| Monthly Statement | <p>The Monthly Statement is the statement published by the United Nations Secretariat on a monthly basis detailing the treaties and international agreements registered or filed and recorded during the preceding month (see section 5.7.4).</p> |

- multilateral treaty** See treaty.
- optional declaration** See declaration.
- party** A party to a treaty is a State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law. See article 2(1)(g) of the Vienna Convention 1969.
- plenipotentiary** A plenipotentiary, in the context of full powers, is the person authorised by an instrument of full powers to undertake a specific treaty action.
- protocol** A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times States have negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.
- provisional application** *provisional application of a treaty that has entered into force*
Provisional application of a treaty that has entered into force may occur when a State unilaterally undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis. The State would generally intend to ratify, accept, approve or accede to the treaty once its domestic procedural requirements for international ratification have been satisfied. The State may terminate this provisional application at any time. In contrast, a State that has consented to be bound by a treaty through ratification, acceptance, approval, accession or definitive signature generally can only withdraw its consent in accordance with the provisions of the treaty or, in the absence of such provisions, other rules of treaty law. See article 24 of the Vienna Convention 1969.
- provisional application of a treaty that has not entered into force*
Provisional application of a treaty that has not entered into force may occur when a State notifies the signatory States to a treaty that has not yet entered into force that it will give effect to the legal obligations specified in that treaty on a provisional and unilateral basis. Since this is a unilateral act by the State, subject to its domestic legal framework,

it may terminate this provisional application at any time.

A State may continue to apply a treaty provisionally, even after the treaty has entered into force, until the State has ratified, approved, accepted or acceded to the treaty. A State's provisional application terminates if that State notifies the other States among which the treaty is being applied provisionally of its intention not to become a party to the treaty.

See article 25 of the Vienna Convention 1969.

**provisional
entry into force**

See entry into force.

**ratification,
acceptance,
approval**

Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Ratification, acceptance and approval all require two steps:

- (a) The execution of an instrument of ratification, acceptance or approval by the Head of State, Head of Government or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant treaty; and
- (b) For multilateral treaties, the deposit of the instrument with the depositary; and for bilateral treaties, the exchange of the instruments between parties.

The instrument of ratification, acceptance or approval must comply with certain international legal requirements (see section 3.3.5 and annex 4).

Ratification, acceptance or approval at the international level indicates to the international community a State's commitment to undertake the obligations under a treaty. This should not be confused with the act of ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions, before it consents to be bound internationally. Ratification at the national level is inadequate to establish the State's consent to be bound at the international level.

See articles 2(1)(b), 11, 14 and 16 of the Vienna Convention 1969.

registration

Registration, in the context of treaty law and practice, refers to the function of the Secretariat of the United Nations in effecting the registration of treaties and international agreements under Article 102 of the *Charter of the United Nations* (see section 5).

reservation

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in. States can make reservations to a treaty

when they sign, ratify, accept, approve or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. Since a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government or Minister for Foreign Affairs (see annex 6). Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations. See articles 2(1)(d) and 19-23 of the Vienna Convention 1969.

**revision/
review**

Revision/review basically means amendment. However, some treaties provide for revisions/reviews separately from amendments (see, e.g., Article 109 of the *Charter of the United Nations*). In that case, revision/ review typically refers to an overriding adaptation of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.

signature

definitive signature (signature not subject to ratification)

Definitive signature occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval. A State may definitively sign a treaty only when the treaty so permits. A number of treaties deposited with the Secretary-General permit definitive signature. See article 12 of the Vienna Convention 1969.

simple signature (signature subject to ratification)

Simple signature applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves it. In that case, a State that signs a treaty is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Signature alone does not impose on the State obligations under the treaty. See articles 14 and 18 of the Vienna Convention 1969.

treaty

Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons. Thus, treaties may be concluded between:

- (a) States;
- (b) International organizations with treaty-making capacity and States; or
- (c) International organizations with treaty-making capacity.

The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law.

The Vienna Convention 1969 defines a treaty as “an international

agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (article 2(1)(a)). Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements.

No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity.

See article 2(1)(a) of the Vienna Convention 1969. See generally Vienna Convention 1969 and Vienna Convention 1986.

Bilateral treaty

A bilateral treaty is a treaty between two parties.

Multilateral treaty

A multilateral treaty is a treaty between more than two parties.