

Treaty Handbook

Prepared by the Treaty Section of the Office of Legal Affairs



United Nations

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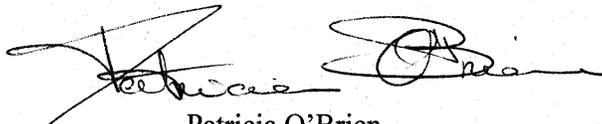
FOREWORD

In its *Millennium Declaration*, the General Assembly of the United Nations emphasized the need to strengthen the international rule of law, thus clearly highlighting a key area of focus for the United Nations in the new millennium. The Secretary-General of the United Nations has also 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 550 multilateral treaties are deposited with the Secretary-General. In order to encourage wider participation in the multilateral treaties deposited with him, the Secretary-General has been inviting States to participate in annual Treaty Events since the initiative was first launched in 2000. In addition to the depositary functions of the Secretary-General, the Secretariat has played a unique role in carrying out functions related to the registration and publication of treaties in accordance with Article 102 of the Charter of the United Nations in order to ensure that treaties in force are in the public domain.

This *Handbook*, prepared by the Treaty Section of the United Nations Office of Legal Affairs, is a practical guide to the depositary practice of the Secretary-General and the registration practice of the Secretariat. It is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework and in registering treaties with the Secretariat as required by Article 102 of the Charter. It is presented in a user-friendly format with diagrams and step-by-step instructions, and touches upon many aspects of treaty law and practice. This *Handbook* is designed for use by States, international organizations and other entities.

Aside from this *Handbook*, there are various other resources available in relation to the depositary and registration practices applied within the United Nations. In particular, attention is drawn to the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, which contains a comprehensive overview of the main features of the depositary practice of the Secretary-General, and the *Final Clauses of Multilateral Treaties Handbook*, which is a practical guide intended to assist those who are directly involved in multilateral treaty-making. The United Nations Treaty Collection website at <http://treaties.un.org>, maintained by the Treaty Section, includes, among many other things, an electronic copy of this *Handbook* and other publications. The website also includes a database containing the status of multilateral treaties deposited with the Secretary-General, as well as a database of treaties registered or filed and recorded and related treaty actions published in the United Nations *Treaty Series*.

Users of this Handbook are encouraged to make full use of the wealth of information contained therein and to contact the Treaty Section of the Office of Legal Affairs with any comments or questions. The Treaty Section provides advice and assistance on treaty law, the depositary practice of the Secretary-General, the registration of treaties, and the drafting of final clauses of multilateral treaties, either upon request or through its training seminars. The training seminars organized by the Treaty Section at United Nations Headquarters and at the regional level are focused not only on treaty law and practice, but also provide an opportunity to encourage, with the assistance of the substantive offices, greater awareness of the implementation of treaty provisions at the national level.



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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, 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; Supplement No. 6, Volume VI; and Supplement No. 7, 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 550 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 1-7) 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 550 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) International law, including customary international law.

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 States to a multilateral treaty designate the depositary for that treaty either in the treaty itself or in some other manner, for example, through a separate decision adopted by the negotiating States. 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 negotiating States 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, 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.

Final clauses are critical in providing guidance to the depositary in the performance of his depositary functions. In order to discharge those functions effectively, the depositary should be consulted in drafting them. Unclear final clauses may create difficulties in interpretation and implementation both for States parties and for the depositary. It is important to note that on 28 August 2001, the Secretary-General of the United Nations promulgated the bulletin “Procedures to be followed by departments, offices and regional commissions of the United Nations with regard to treaties and international agreements” (see ST/SGB/2001/7 of 28 August 2001 in annex 11). In section 4.2 of this bulletin, the Secretary-General of the United Nations expressly states that, in the case of multilateral treaties to be deposited with him, draft final clauses of such multilateral treaties shall be submitted by the relevant department, office or regional commission to the Treaty Section for review and comment prior to finalization.

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.)

The first commonly used step to participate in a treaty is signing that treaty. As explained below, unless the treaty otherwise provides, a signatory does not become a party to a treaty through signature alone. Multilateral treaties contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc.

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. Some multilateral treaties are open for signature indefinitely. Most multilateral treaties on human rights issues fall into this category, for example, the *International Covenant on Civil and Political Rights, 1966*; the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; and the *Convention on the Rights of Persons with Disabilities, 2006*.

Today, multilateral treaties deposited with the Secretary-General of the United Nations generally make provision for signature by all States. 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 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, for example, 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 ...”.

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

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 a State can express consent to be bound by definitively signing the treaty, i.e., signing without reservation as to ratification, acceptance or approval.

Of the treaties deposited with the Secretary-General, this method is most commonly used in certain treaties negotiated under the auspices of the regional Economic Commissions, for example, 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.

Also the *Agreement on International Railways in the Arab Mashreq, 2003*, provides in its article 5 (2) that members under paragraph 5 (1) may become parties by:

- (a) Signature not subject to ratification, acceptance or approval (definitive signature);
- (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) Accession.

3.2 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 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 of full powers empowers the specified representative to sign a given treaty. This is a legal requirement reflected in article 7 of the Vienna Convention 1969. It is designed to protect the interests of all States that can participate in a treaty as well as the integrity of the depositary. Typically, full powers are issued for the signature of a specified treaty, but may also be issued to empower a specific representative to sign more than one 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 authorize a specified representative to sign all treaties deposited with the Secretary-General.

3.2.3 *Form of instrument of full powers*

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

As depositary, the Secretary-General requires 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. Signature of a treaty without proper full powers is not acceptable. Full powers not containing a legible signature from one of the above-mentioned authorities are also not acceptable (for example, a telexed message). 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 exceptionally 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** authorized 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 3 February 2010, LA41TR/221/Full Powers Guidelines/2010 (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 authorize 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 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 signed instrument of full powers well in advance of signature (facsimiles and e-mails are acceptable for this purpose). The representative empowered to sign on behalf of his/her Government would normally hand over the original instrument of full powers at the time of signature. However, in accordance with the depositary practice, a signature by a representative could be accepted on the basis of a copy of the full powers on condition that they are in proper and due form, but this requires that the State provide the Treaty Section with the original full powers as soon as possible (by hand or mail).

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 deposit an instrument of ratification, acceptance, approval or accession 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, the moment at which that State becomes party to the treaty. Each treaty normally contains provisions dealing with both aspects.

3.3.2 *Ratification*

(See the model instrument of ratification in annex 4.)

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 become party to a treaty at the international level, its international responsibility is engaged. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon entry into force of the treaty for a State, that 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 action at the international level, i.e., the deposit of the instrument of ratification, must 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. In the case of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000*, when a State deposits an instrument of ratification, approval, etc., it must at the same time also deposit a binding declaration under article 3 (2) in which it sets forth the minimum age at which that State 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.

3.3.3 *Acceptance or approval*

(See the model instrument of acceptance or approval in annex 4.)

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).

Most treaties deposited with the Secretary-General provide for acceptance or approval with prior signature, for example, the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008*, and the *International Cocoa Agreement, 2010*.

3.3.4 Accession

(See the model instrument of accession in annex 5.)

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, acceptance or approval. However, unlike ratification, acceptance or approval, which are 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, treats instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned are 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 from the day after the treaty closes for signature. 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*. Other treaties, such as disarmament treaties, provide for States to accede from the day after the treaty enters into force as, for example, article XIII of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*.

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 only 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 to the Treaty Section. In accordance with the depositary practice, if a State initially faxes or sends by e-mail a signed copy of an instrument, such copy may be accepted for deposit but that State 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 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. Article 56 of the *International Cocoa Agreement, 2010*, also provides for provisional application with effect from the entry into force of the Agreement or, if it is already in force, at a specified date.

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 or 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 in which the State would otherwise be unwilling or unable to participate.

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, reservations are prohibited in many environmental treaties (see, for example, article 37 of the *Convention on Biological Diversity, 1992* and article 37 of the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994*). Other treaties permit certain reservations or are silent about reservations.

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 text of the reservation to all

the States concerned. The Secretary-General accepts the reservation in deposit only if no State informs him that it does not wish him to consider the reservation to have been accepted for deposit. 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 late 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 (LA41TR/221 (23-1) (extracted in annex 2)).

3.5.4 Form of reservations

(See the model instrument of a reservation in annex 6.)

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, as in the case of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*, for example, 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 unauthorized reservation. This practice is followed only in instances where, *prima facie*, there is no doubt that the reservation is unauthorized 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 unauthorized 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 authorizes reservations

Where a State formulates a reservation that is expressly authorized by the relevant treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification. 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. 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 upon expression of consent to be bound 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”.

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 chapter IV, at <http://treaties.un.org/pages/ParticipationStatus.aspx>).

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, for example, 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* (depository notification C.N.506.2007.TREATIES-19):

The Government of (name of State) has examined the reservations made by the Government of (name of State) upon accession to the Convention on the Elimination of All Forms of Discrimination against Women regarding Article 9, paragraph 2 and those provisions of the Convention that may be contrary to the Constitution of (name of State) ... The Government of (name of State) therefore objects to the aforesaid reservations made by the Government of (name of State) to the Convention. This objection shall not preclude the entry into force of the Convention between (name of State) and (name of State). The Convention enters into force in its entirety between (name of State) and (name of State), without (name of State) benefiting from its reservation.

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*

(See the model instrument of withdrawal of reservation(s) in annex 8.)

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 depository, circulates a notification of a withdrawal to all States concerned.

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*

(See the model instrument of modification of reservation(s) in annex 7.)

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 depository, circulates such modifications and grants the States concerned a specific period within which to object to them. In the absence of any objection, the Secretary-General accepts the modification in deposit.

In the past, the Secretary-General's practice as depository 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, for example, 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.1338.2003.TREATIES-11):

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 1 December 2004.

3.6 Declarations

(See the *Summary of Practice*, paras. 217-220.) (See the model instrument of a declaration in annex 6.)

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 harmonizing 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, for example, 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.

Declarations related to the settlement of disputes are also generally optional. They may be made upon signature, ratification, accession or at any time thereafter.

See, for example, article 11 (3) of the *Vienna Convention for the Protection of the Ozone Layer, 1985*:

When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory.

Other optional declarations related to the settlement of disputes are considered authorized reservations under the treaty. See, for example, article 66 (3) and (4) of the *United Nations Convention Against Corruption, 2003*:

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

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

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 signed 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 had to 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. However, since a doubt could arise about whether a declaration in fact constitutes a reservation, 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.

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 authorizes 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, 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.

Objections to declarations 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. Normally, objecting States specify that the objection does not preclude the entry into force of the treaty between them and the reserving State.

See, for example, the objection by a State to a declaration made by another State upon its accession to the *Convention on the Rights of Persons with Disabilities, 2006* (depositary notification C.N.486.2010.TREATIES-18):

The (name of State) has examined the declaration made by the (name of State) upon its accession to the Convention on the Rights of Persons with Disabilities (hereinafter the 'Convention') on October 23, 2009. The (name of State) points out that the title of a statement intended to modify

or exclude the legal effects of certain provisions of a treaty does not alone determine the status of such statement as a reservation or declaration. The (name of State) is of the opinion that the declaration made by the (name of State) constitutes, in fact, a reservation. The (name of State) finds that the reservation does not make it clear to what extent the (name of State) is willing to honour its obligations under the Convention, since 'it does not consider itself bound by any provisions of the Convention which may be incompatible with its applicable rules'. The (name of State) believes that this reservation is incompatible with the object and purpose of the Convention. According to Article 46, paragraph 1 of the Convention and customary international law codified in the Vienna Convention on the Law of Treaties, such reservations should not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. The (name of State), therefore, objects to the aforesaid reservation made by the (name of State) and considers the reservation null and void. This objection shall not preclude the entry into force of the Convention between the (name of State) and the (name of State), without the (name of State) benefiting from its reservation.

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.

3.7 Notifications

Notifications normally provide information as required under a treaty. They usually relate to designation of authorities or designation of languages, or the establishment of jurisdiction required under the treaty provisions. See, for example, notifications under articles 6 (3), 44 (6) (a) and 46 (13) and (14) of the *United Nations Convention against Corruption, 2003*; and articles 5 (3), 16 (5), 18 (13) and (14), and 31 (6) of the *United Nations Convention against Transnational Organized Crime, 2000*.

For example, under article 18 (13) of the *United Nations Convention against Transnational Organized Crime, 2000*, and article 46(13) of the *United Nations Convention against Corruption, 2003*, States are required to notify the Secretary-General at the time of the deposit of the instrument of ratification, acceptance, approval of or accession to the Convention of the central authority for purposes of receiving mutual legal assistance requests. Article 9 (3) of the *International Convention for the Suppression of Acts of Nuclear Terrorism, 2005*, requires a State to notify the Secretary-General upon ratifying, accepting, approving or acceding to the Convention of the jurisdiction it has established as required by the Convention.

Some notifications can be deposited upon signature, ratification or accession or at any time thereafter, for example, notifications nominating conciliators and arbitrators pursuant to Annexes V and VII to the *United Nations Convention on the Law of the Sea, 1982*.

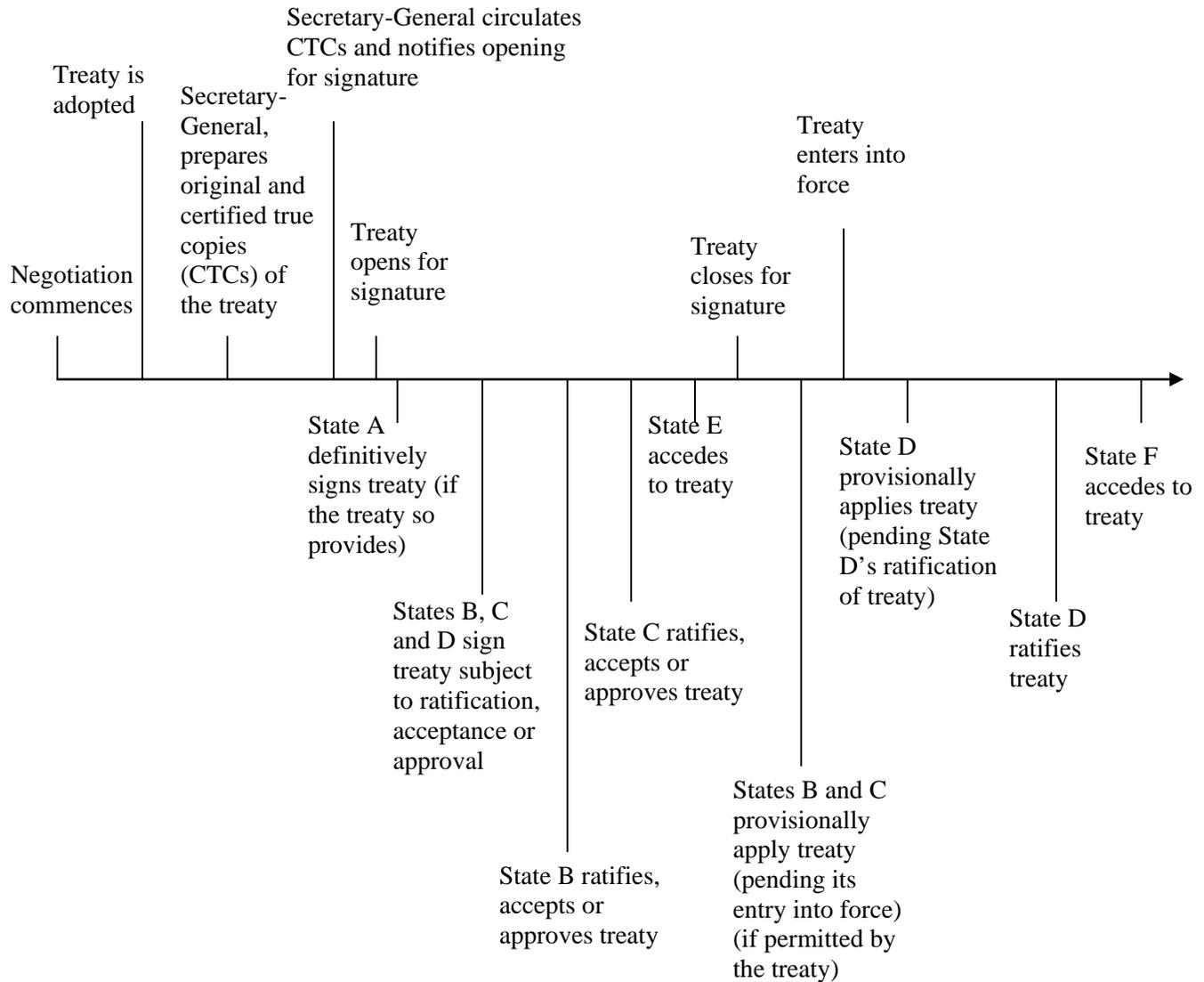
In the case of derogations from the *International Covenant on Civil and Political Rights, 1966*, in time of public emergency, a State must immediately inform other States, through the intermediary of the Secretary-General of the United Nations, of the provisions of the Covenant from which it has derogated and of the reasons by which it was actuated. The Secretary-General must also be informed of an extension or cessation of a state of emergency.

Since a notification does not have a legal effect similar to a declaration or reservation, it does not need to be signed by one of the three authorities.

4 KEY EVENTS IN A MULTILATERAL TREATY

4.1 Overview

This section outlines what happens to a treaty after it is adopted. The timeline 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 provides 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. All multilateral treaties deposited with the Secretary-General that are concluded nowadays specify when they will enter into force.

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, for example, 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) A specific time after a certain percentage, proportion or category of States deposited instruments of ratification, approval, acceptance or accession with the depositary.

See, for example, 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, for example, 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 after certain conditions are fulfilled.

See, for example, article 39 (1) of the *International Tropical Timber Agreement, 2006*:

This Agreement shall enter into force definitively on 1 February 2008 or on any date thereafter, if 12 Governments of producers holding at least 60 per cent of the total votes as set out in Annex A to this Agreement and 10 Governments of consumers as listed in Annex B and accounting for 60 per cent of the global import volume of tropical timber in the reference year

2005 have signed this Agreement definitively or have ratified, accepted or approved it pursuant to article 36, paragraph 2, or article 37. 2. If this Agreement has not entered into force definitively on 1 February 2008, it shall enter into force provisionally on that date or on any date within six months thereafter if 10 Governments of producers holding at least 50 per cent of the total votes as set out in Annex A to this Agreement and seven Governments of consumers as listed in Annex B and accounting for 50 per cent of the global import volume of tropical timber in the reference year 2005 have signed this Agreement definitively or have ratified, accepted or approved it pursuant to article 36, paragraph 2 or have notified the depositary under article 38 that they will apply this Agreement provisionally.

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, for example, 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, for example, 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, for example, article 57 (2) of the *International Cocoa Agreement, 2010*:

This Agreement shall enter into force provisionally on 1 January 2011 if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the Depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.

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 general 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, for example, 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, for example, 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 Part 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, for example, article 15 of the *Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006*:

Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties; with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals.

(b) Circulation of proposals of amendments

Normally, the relevant treaty secretariat circulates proposals of amendments. The treaty secretariat is in the best position to provide administrative support and assist with any necessary consultation between negotiating States. 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, for example, article 13 (4) of the *Convention on Cluster Munitions, 2008*:

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 all States.

(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, for example, 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 enters into force in accordance with the amendment provisions that are built into the treaty, for example:

- (i) Upon elapse of a specified time period following deposit of a specified number or percentage of instruments of ratification, acceptance, etc.; or
- (ii) Within a certain period of time following its circulation, provided none of the parties to the treaty objects.

See, for example, 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 some cases, all States parties to the treaty.

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

The provisions of the treaty determine which States are bound by the amendment. See, for example, 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 States may meet to adopt additional agreements or protocols to address the problem. While contracting States and signatories play an essential role in such negotiations, it is not unusual for all interested States to participate. See, for example, 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. Some treaties specify that an amendment enters into force upon a specified period following the deposit of a specified number of ratifications, acceptances or approvals. 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, determines the time an amendment enters into force by counting all parties at any given time following the adoption of the amendment. 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 (see (c) (i) and (ii) above) carry the burden of proof.

Some treaties, including human rights treaties, do not contain withdrawal provisions. See, for example, 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 (for example, 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 set up in the *Charter of the United Nations* 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.)

Recognizing the need for the Secretariat to have uniform guidelines for implementing Article 102 of the *Charter of the United Nations*, 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 the 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 the 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 or additional documents, in writing, from the submitting party. The Secretariat will not process the instrument until it receives such clarification or additional documents.

Where an instrument is registered with the Secretariat, this does not imply a judgement by the Secretariat on 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 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 recognize the treaty-making capacity of certain international organizations, such as the European Union. 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 must be registered with the Secretariat. The treaty or international agreement has to be in force between at least two of the parties and the other requirements for registration have to be met (article 1 of the Regulations) (see section 5.6).

As mentioned above, Member States 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 Member States of the United Nations. Although this obligation is mandatory for Member States of the United Nations, it does not preclude international organizations with treaty-making capacity or non-Member States from submitting for registration treaties or international agreements entered into with a Member State.

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 subjects of international law, 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 subjects of international law, 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 must 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 depositary 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, article 5 of the Regulations in the annex to the General Survey and annex 10.)

Before preparing documents for registration, the following points should be taken into account:

- (a) Whether the treaty or international agreement has already been registered with the Secretariat. If the treaty or international agreement has already been registered, it does not have to be submitted for registration.
- (b) Provisions in a treaty may invoke other agreements that form a part of the treaty and are essential for the application and implementation of the treaty. If those agreements are not yet registered, they should also be submitted for registration.

Treaties and international agreements that have already been registered could be searched on the United Nations Treaty Series database (<http://treaties.un.org>).

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 of the *Charter of the United Nations* (see section 5.3).

2. Certifying statement

(See the model certifying statement in annex 9.)

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 certifying statement 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.

3. Copy of treaty or international agreement

A party must submit ONE certified true and complete copy of **all** authentic text(s) in paper format and, if available, ONE electronic copy to the Secretariat for registration purposes. Most treaties or international agreements are concluded in more than one language. A paper and electronic copy of the treaty or international agreement in all the languages in which it was concluded must be submitted. As all registered treaties will subsequently be published in the United Nations *Treaty Series*, it is imperative that the hard copy version is clear, legible and capable of being reproduced in the United Nations *Treaty Series* (see updated publication requirements at

<http://treaties.un.org/doc/source/guidelines.pdf>. The General Assembly has urged 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. Copy of attachments

A party must submit ONE certified true and complete copy of all attachments in paper format and, if available, ONE electronic copy of them. Since the text of a treaty or an international agreement submitted for registration must be “complete”, a copy of all enclosures, such as protocols, exchanges of notes, authentic texts, annexes, etc., to the treaty or international agreement forming an integral part thereof must be

included in the submission 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.

5. Copy of reservations, declarations, objections (particularly for multilateral treaties)

A party must submit ONE certified true and complete copy in paper format and, if available, ONE electronic copy of all reservations, declarations and objections, if any, in the language(s) in which they were formulated and English and French translations, if possible.

6. List of contracting States or organizations (for multilateral treaties)

In the case of a multilateral treaty, a list of contracting States or organizations must be provided, with the date of deposit of the instruments, the type of instruments (ratification, accession, etc.) and the date of entry into force of the treaty indicated for each contracting State or organization.

7. Date and method of entry into force, place and date of conclusion, names of signatories

The documentation submitted must specify the date and method of entry into force, as well as the date and place of conclusion of the treaty or international agreement. The names of the signatories should be specified unless they are in typed form as part of the signature block. All these types of information can be provided in the certifying statement (see section 5.6.2).

8. Subsequent agreements

Any treaty or international agreement concluded in relation to a previously registered or filed and recorded treaty or international agreement (such as a protocol amending the original treaty) must be submitted in accordance with the requirements mentioned above.

9. Subsequent actions

All subsequent actions to a treaty or an international agreement must be registered or filed and recorded with the Secretariat. In case a subsequent action is accompanied by an instrument, for example, a reservation or a declaration, ONE certified true and complete copy thereof must also be submitted in paper format and, if available, ONE electronic copy of the instrument. The copy to be provided should be in the language(s) in which it was formulated, accompanied by English and French translations, if possible. The documentation submitted must specify the date of notification and the date of effect of the treaty action.

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 as soon as possible following receipt of the registration 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 processing.

Registering parties have an important obligation to ensure that documents submitted for registration are complete, accurate and legible 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), and subsequent actions (see section 5.5.4).

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 of Treaties and International Agreements

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

The Secretariat publishes a *Monthly Statement of the Treaties and International Agreements* registered, or filed and recorded (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* lists in its annexes A and B subsequent actions (for example, 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 as it publishes in electronic format the text of the treaty as submitted.

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, A/33/258, 2 October 1978, paras. 3-7).

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

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 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 in the United Nations *Treaty Series*.

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:	212 963 5047
Office of Legal Affairs	Facsimile:	212 963 3693
United Nations	Website:	http://treaties.un.org
New York, NY 10017		
USA		

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.

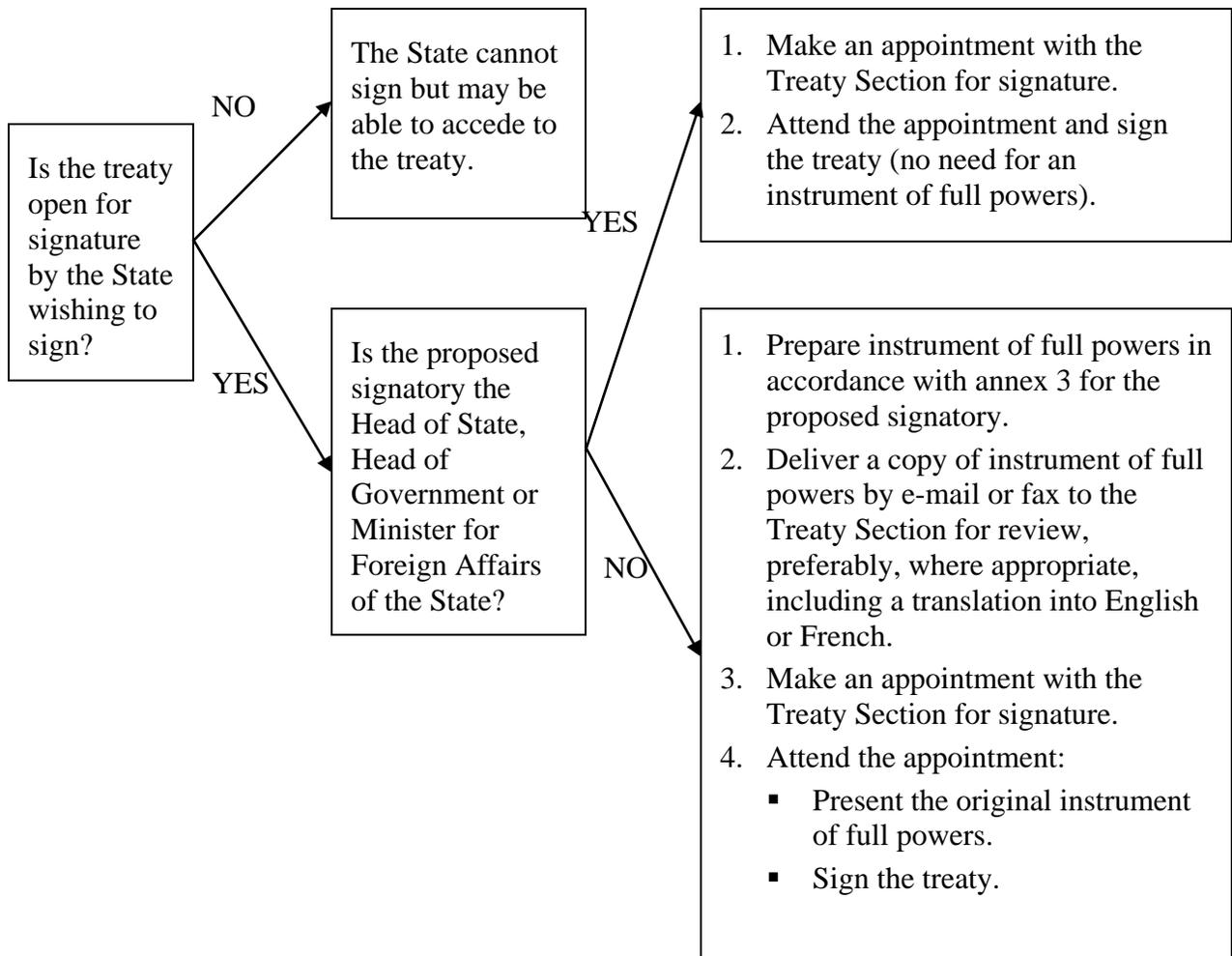
6.1.3 *Delivery of documents for deposit*

Most treaty actions become effective only upon deposit of the relevant instrument. States are advised to deliver instruments for deposit 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.

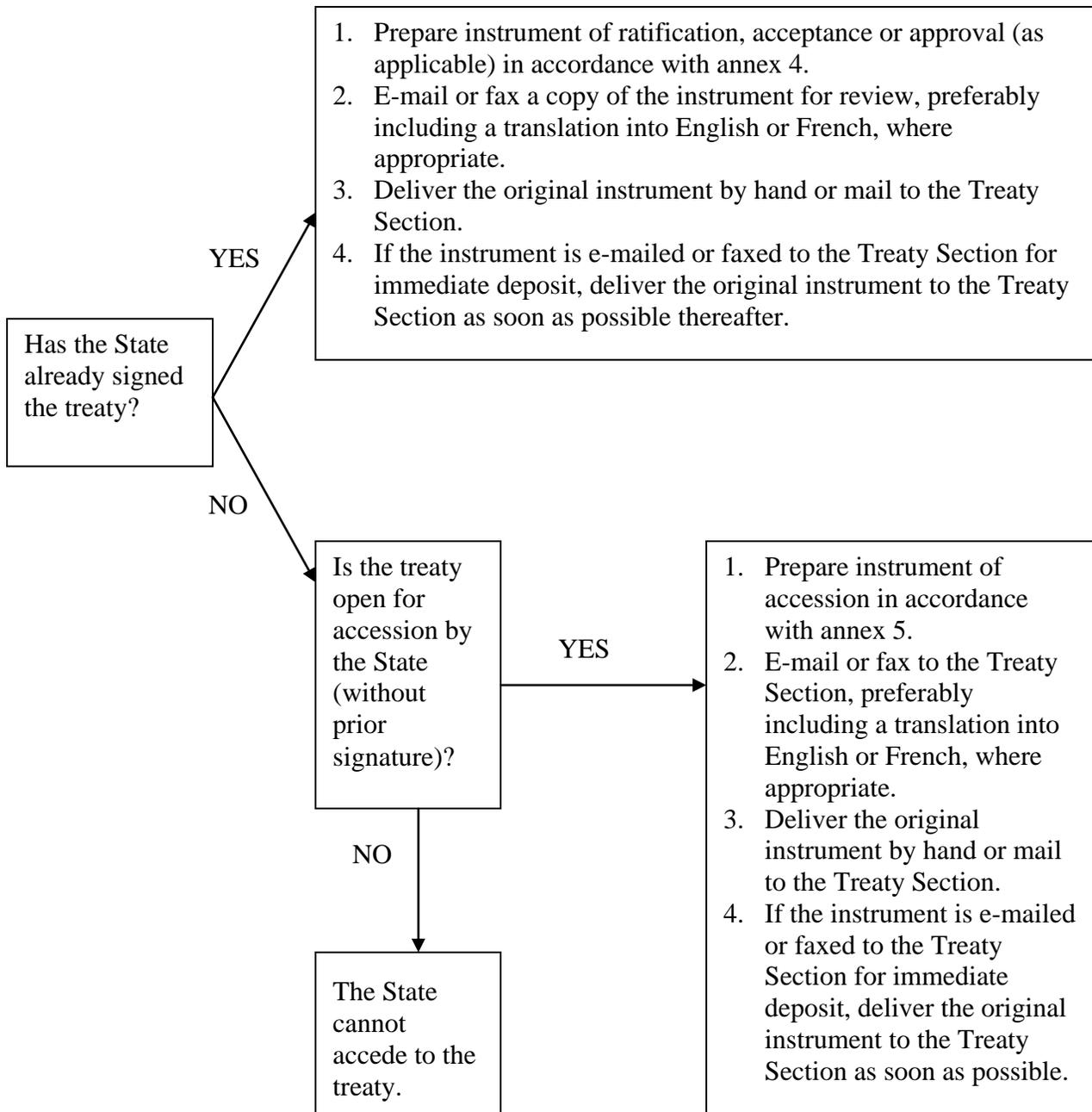
6.1.4 *Translations*

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

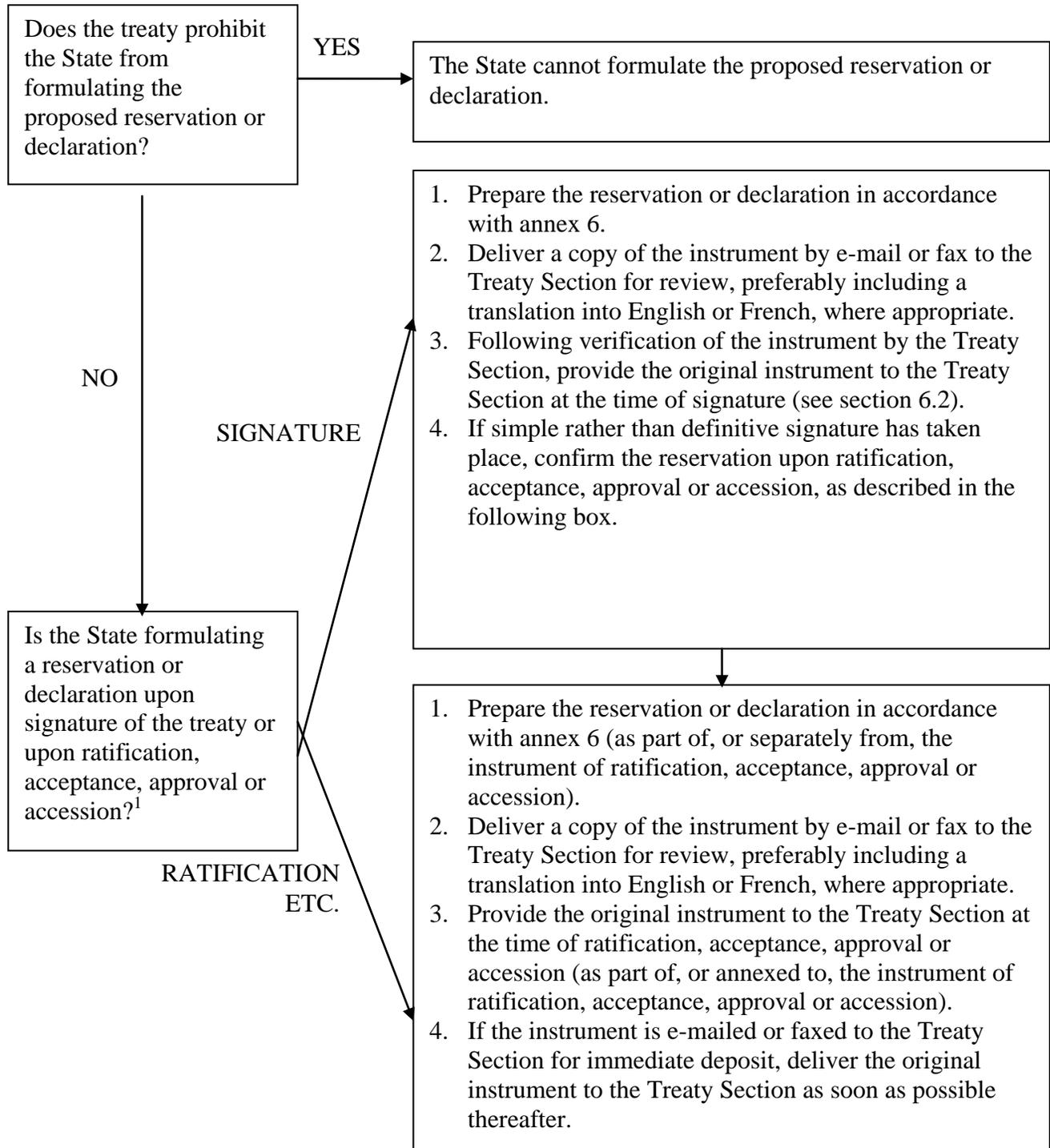
6.2 Signing a multilateral treaty



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



6.4 Making a reservation or declaration to a multilateral treaty

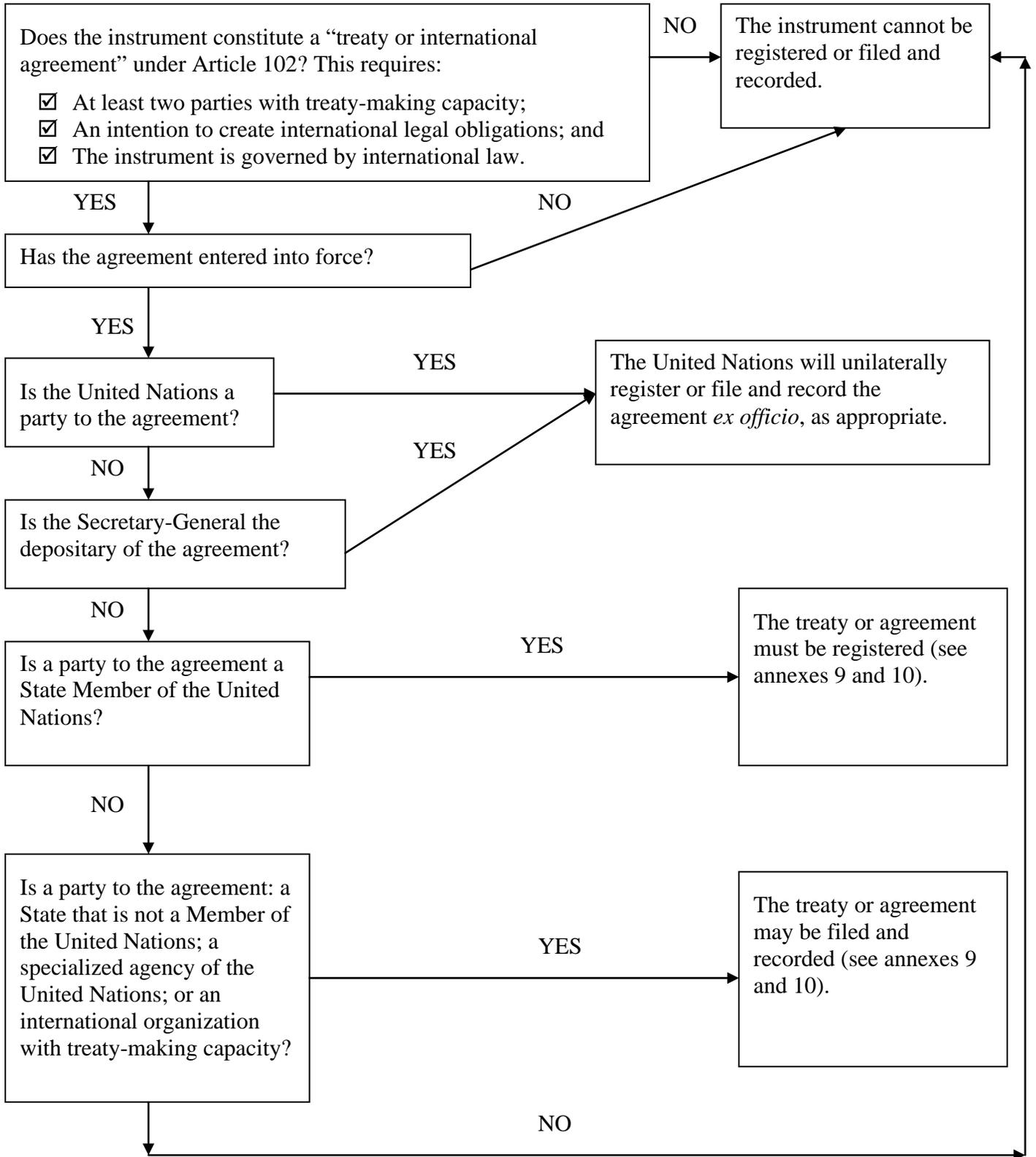


¹ The Secretary-General may accept reservations or declarations other than upon signature, ratification, acceptance, approval or accession on exceptional occasions.

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 (see ST/SGB/2001/7 of 28 August 2001 in annex 11).
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 pdf and Word versions of the treaty as adopted (hard copy and electronic format – Microsoft Word).

6.6 Registering or filing and recording a treaty with the Secretariat



ANNEX 1 – NOTE VERBALE FROM THE LEGAL COUNSEL (FULL POWERS), 2010

REFERENCE: LA41TR/221/Full Powers Guidelines/2010

The Legal Counsel presents her compliments to the Permanent Representatives to the United Nations and has the honour to communicate the following in relation to full powers for the signing of treaties deposited with the Secretary-General as depositary of multilateral treaties.

With a view to assisting States in increasing participation in the multilateral treaty framework, the Treaty Section of the Office of Legal Affairs, which discharges the functions of the Secretary-General in his capacity as depositary of multilateral treaties, has prepared the attached Guidelines. These Guidelines address the Secretary-General's requirements, consistent with treaty law, applicable to instruments of full powers.

Additional information regarding full powers may be obtained from the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1) and the *Treaty Handbook* published by the Treaty Section. Please also refer to the *Treaty Handbook* for a model instrument of full powers. Both publications are available in the United Nations Treaty Collection at the following address:
<http://treaties.un.org>.

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

3 February 2010

P.O'B.

FULL POWERS GUIDELINES

Only heads of States or Government or Ministers for Foreign Affairs, or a person acting, ad interim, in one of the above positions may execute treaty actions by virtue of their functions. All other individuals must be in the possession of appropriate full powers. Proper full powers are required by all persons seeking to sign a treaty deposited with the Secretary-General, sign an instrument of ratification, acceptance, approval or accession; a binding declaration or notification; or a reservation relating to a treaty deposited with the Secretary-General. Full powers however, are not required to deposit a duly signed instrument of ratification, acceptance, approval or accession with the Secretary-General.

Secretary-General's requirements applicable to full powers:

1. Signature by the Head of State, Head of Government or Minister for Foreign Affairs or a person acting, ad interim, in one of the above positions;
2. Title of the treaty;
3. Express authorization to sign the treaty or undertake the treaty action concerned;
4. Full name and title of the person duly authorized to sign;
5. Date and place of signature of the instrument of full powers; and
6. Official seal. This is optional and cannot replace the signature of one of the three authorities of State.

Please note:

- Where general full powers have been issued to a named person and have been deposited with the Secretariat in advance, specific full powers are not required.
- Full powers must be submitted for verification to the Treaty Section in advance of the intended date of signature or treaty action.
- Copies of signed instruments of full powers may be faxed to the Treaty Section for verification in advance of the signature or treaty action, provided that the original promptly follows (Fax: 1 212 963 3693). The depositary will also accept a scanned copy of a signed instrument of full powers transmitted by electronic mail to the following e-mail address: depositarycn@un.org. You can always contact the Treaty Section if you need additional information at 1 212 963 5047.

**ANNEX 2 – NOTE VERBALE FROM THE LEGAL COUNSEL
(EXTENSION OF TIME LIMITS TO LODGE OBJECTIONS
TO LATE 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 Representatives 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 AUTHORIZE [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 authorized 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 INSTRUMENT 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]

**ANNEX 7 – MODEL INSTRUMENT OF MODIFICATION
OF RESERVATION(S)**

**(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]

**ANNEX 8 – MODEL INSTRUMENT OF WITHDRAWAL OF
RESERVATION(S)**

**(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 9 – 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], and that it was concluded in the following languages: [...]. *I further certify that the additional copy of this Agreement submitted on electronic media 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*, vol. 859/860, p. VIII, 1973. See also General Assembly resolution 52/153 of 15 December 1997; *Repertory of Practice of United Nations Organs* (vol. V, New York, 1955, Articles 92-111, and Supplements 1 to 7).

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

³ For multilateral agreements, a complete list of contracting States or organizations with the date of deposit of the instruments of ratification, accession, etc., and the date of entry into force of the agreement for each party must be provided.

ANNEX 10 – 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* and the Regulations:

PRELIMINARY CHECKS	<ul style="list-style-type: none"> • Has the treaty already been registered with the Secretariat? (If so, it does not have to be submitted.) • Provisions in a treaty may invoke other agreements that form a part of the treaty and are essential for the application and implementation of the treaty. Are those agreements already registered? (If not, all those agreements should also be submitted in the format specified below.)
DOCUMENTATION TO BE PROVIDED	FORMAT / TYPE OF INFORMATION
1. Treaty / Agreement	<ul style="list-style-type: none"> • ONE certified true and complete and legible copy of all authentic text(s) and, if available, • ONE electronic copy on electronic media
2. All attachments (annexes, minutes, procès-verbaux, etc.)	<ul style="list-style-type: none"> • ONE certified true and complete and legible copy of all authentic text(s) and, if available, • ONE electronic copy on electronic media
3. Text of reservations, declarations, objections (particularly for multilateral treaties)	<ul style="list-style-type: none"> • ONE certified true and complete and legible copy of all authentic text(s) and, if available • ONE electronic copy on electronic media
4. Translations of 1 to 3 above into English and/or French (if available)	One paper copy and one electronic copy, if available, where necessary
5. List of contracting States/organizations (for multilateral treaties)	<ul style="list-style-type: none"> • Please provide, for each contracting State or organization: <ul style="list-style-type: none"> • Date of deposit of the instrument • Nature of the instrument (ratification, accession, etc.) • Date of entry into force of the Treaty/Agreement
6. Maps (if applicable)	<ul style="list-style-type: none"> • ONE certified true and complete copy of the original document in its original scale and, if available, • ONE high resolution (400-600 dpi) scanned digital file
7. Certifying statement	<ul style="list-style-type: none"> • Statement of true and complete copy (for both paper and electronic copy) • Title of Treaty / Agreement • Date and place of conclusion • Date of entry into force • Method of entry into force (signature, ratification, approval, accession, etc.) • Authentic languages • Names of signatories

ANNEX 11 – SECRETARY-GENERAL’S BULLETIN (ST/SGB/2001/7)

Secretary-General’s bulletin

Procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements

The Secretary-General, for the purpose of establishing procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements, promulgates the following:

Part I

Treaties and international agreements concluded by the United Nations

Section 1

Drafts of treaties and international agreements

Drafts of treaties and international agreements to be concluded by the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

Section 2

Registration or filing and recording

All treaties and international agreements concluded by the United Nations shall be forwarded by the relevant department, office or regional commission to the Treaty Section of the Office of Legal Affairs (Treaty Section), upon their entry into force, for registration pursuant to Article 102 of the Charter of the United Nations, or filing and recording. Such instruments shall remain in the custody of the Treaty Section unless special arrangements have been approved in advance by the Treaty Section.

Part II

Instruments relating to treaty actions by the United Nations

Section 3

Instruments requiring consultations

Where the United Nations intends to undertake a treaty action for which purpose full powers, an act of formal confirmation or an instrument of acceptance, approval or accession are required, the relevant department, office or regional commission shall consult with the Office of Legal Affairs in advance of such action.

Part III**Treaties and international agreements to be deposited with the Secretary-General****Section 4****Drafts of treaties and international agreements**

4.1 All draft treaties and international agreements intended to be deposited with the Secretary-General of the United Nations shall be submitted by the relevant department, office or regional commission to the Office of Legal Affairs for review and comment prior to finalization.

4.2 Draft final clauses of such treaties and international agreements shall be submitted by the relevant department, office or regional commission to the Treaty Section for review and comment prior to finalization.

4.3 Every endeavour shall be made to ensure that the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations are concluded only in the official languages of the United Nations.

Section 5**Adopted texts of treaties and international agreements**

5.1 Following the formal adoption of the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations, the adopted texts shall be submitted by the relevant department, office or regional commission, in both paper and electronic formats, to the Treaty Section, in all the authentic languages, for purposes of preparing the originals of such agreements, and for performing the requisite depositary functions. In general, a period of four weeks should be allowed between the dates of adoption and the dates on which the treaties or international agreements are opened for signature to enable the preparation of the originals of the treaties or international agreements and the distribution of the certified true copies.

5.2 Following the formal adoption of such texts, no further changes shall be made to the texts by any department, office or regional commission, except in consultation with the Treaty Section.

Section 6**Designation of the Secretary-General as depositary of treaties and international agreements**

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

6.2 When it is intended that the Secretary-General be designated the depositary, the relevant department, office or regional commission shall consult the Treaty Section in advance.

6.3 All treaties and international agreements deposited with the Secretary-General and open for signature shall remain in the custody of the Treaty Section. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

Section 7
Full powers

All instruments of full powers received by any department, office or regional commission authorizing representatives to sign treaties and international agreements deposited with the Secretary-General shall be forwarded to the Treaty Section for verification prior to signature of such treaties and international agreements. Any exceptions to this rule shall be arranged in advance with the Treaty Section.

Section 8
Ceremony of signature

When it is arranged for States to sign a treaty or international agreement deposited with the Secretary-General on the same occasion, the Office of Legal Affairs shall be informed in advance by the relevant department, office or regional commission. Arrangements for the ceremony at which the signatures are to be affixed, including provision for the discharge of the depositary functions, shall be made in consultation with the Treaty Section.

Section 9
Instruments and notifications to be deposited with the Secretary-General

Instruments of ratification, acceptance, approval, accession, succession or any similar instruments and notifications relating to treaties and international agreements deposited with the Secretary-General which are received by any department, office or regional commission shall be forwarded to the Treaty Section.

Part IV
Final provisions**Section 10**
Final provisions

10.1 The present bulletin shall enter into force on 1 October 2001.

10.2 Administrative instruction AI/52 of 25 June 1948 is hereby abolished.

(*Signed*) Kofi A. Annan
Secretary-General

GLOSSARY

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, for example, 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 9).
- 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 twentieth 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** 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:
- (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.
- If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting States. 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 objects, the Secretary-General circulates a *procès-verbal* of rectification and causes the corrections to be effected in the authentic text(s) *ab initio*. States have 90 days to object to a proposed correction. This period can be shortened if necessary.
- See article 79 of the Vienna Convention 1969.
- credentials** Credentials take the form of a document issued by a State authorizing 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 550 multilateral treaties. See articles 76 and 77 of the Vienna Convention 1969.

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

A depositary notification (usually 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 summarizing 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. For example, 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 considers such M.O.U.s concluded by the United Nations to be binding and registers them ex officio.</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 a particular 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 authorized 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 refers to the obligation by Member States of the United Nations to submit their treaties and international agreements to the Secretariat of the United Nations in accordance with 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, for example, 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 subjects of international law.

Multilateral treaty

A multilateral treaty is a treaty between more than two subjects of international law.

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