(b) be considered as having been made by the state in question only upon its receipt by the state to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the state for which it was intended only when the latter state has been informed by the depositary in accordance with Article 77, para 1(e).

Article 79 Correction of errors in texts or in certified copies of treaties

1 Where, after the authentication of the text of a treaty, the signatory states and the Contracting States are agreed that it contains an error, the error shall, unless they decided upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialed by duly authorised representatives;

(b) by executing or exchanging the instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2 Where the treaty is one for which there is a depositary, the latter shall notify the signatory states and the Contracting States of the error and of the proposal to correct it and shall specify an appropriate time limit within which objection to the proposed correction may be raised. If, on the expiry of the time limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the states entitled to become parties to the treaty.

(b) an objection has been raised, the depositary shall communicate the objection to the signatory states and to the Contracting States.

3 The rules in paras 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory states and the Contracting States agree should be corrected.

4 The corrected text replaces the defective text *ab initio*, unless the signatory states and the Contracting States otherwise decide.

5 The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6 Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory states and to the Contracting States.

Article 80 Registration and publication of treaties

1 Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2 The designation of a depositary shall constitute authorisation for it to perform the acts specified in the preceding paragraph.

PART VIII
FINAL PROVISIONS

Article 81 Signature

The present Convention shall be open for signature by all states Members of the United Nations or of any of the specialised agencies or of the international Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other state invited by the General Assembly of the United nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at the United Nations Headquarters, New York.

Article 82 Ratification

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

Article 83 Accession

The present Convention shall remain open for accession by any state belonging to any of the categories mentioned in Article 81. The instrument of accession shall be deposited with the Secretary General of the United Nations.

Article 84 Entry into force

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

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

Article 85 Authentic texts

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

In witness whereof the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

ANNEX

1 A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary General of the United Nations. To this end, every state which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2 When a request has been made to the Secretary General under Article 66, the Secretary General shall bring the dispute before a conciliation commission constituted as follows:

The state or states constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that state or of one of those states, who may or may not be chosen from the list referred to in para 1; and

(b) one conciliator not of the nationality of that state or of any of those states, who shall be chosen from the list.

The state or states constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary General within 60 days following the expiry of that period. The appointment of the chairman may be made by the Secretary General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3 The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4 The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5 The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6 The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7 The Secretary General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

4.2 Definitions

VCT 1969 only applies to written agreements between states, VCIO 1986 deals with written agreements between states and International Organisations or between International Organisations. Although both Conventions only apply to

written agreements, this should not be taken to mean that agreements not in writing have no effect in international law – such unwritten agreements will still be regarded as treaties and will be governed by the customary law on treaties – subject to difficulties of proof of content.

> There is no precise nomenclature for international treaties: 'treaty', 'convention', 'agreement' or 'protocol' are all interchangeable. Furthermore the meaning of most of the terms used in the law of treaties is extremely variable, changing from country to country and from Constitution to Constitution; in international law it could even be said to vary from treaty to treaty: each treaty is, as it were, a microcosm laying down in its final clauses the law of its own existence in its own terms. The uncertainty in wording is a result of the relativity of treaties ...
>
> Despite the terminological jumble, a definition is needed if only to delimit the scope of the rules to be discussed. The broader the definition, the fewer the rules applying to all cases it covers. It is precisely because the rules common to written agreements between states are comparatively numerous that the Vienna Convention dealt with them alone. In order to convey the general sense of the problem, a somewhat broader definition will be presented and discussed here, although the greater part of this study is restricted to the Vienna Convention, which covers the most homogeneous and richest part of the subject. The suggested definition is as follows: 'A treaty is an expression of concurring wills attributable to two or more subjects of international law and intended to have legal effects under the rules of international law.'[7]
>
> The restriction of the use of the term 'treaty' in the draft articles to international agreements expressed in writing is not intended to deny the legal force of oral agreements under international law or to imply that some of the principles contained in later parts of the Commission's draft articles ... may not have relevance in regard to oral agreements.[8]

An example of an oral agreement is to be found in the case involving the *Legal Status of Eastern Greenland* (1933).[9] The case arose from a dispute between Norway and Denmark over claims to sovereignty in Eastern Greenland. Denmark based its claim on the fact that during negotiations between government ministers, the Danish minister suggested to M Ihlen, the Norwegian Foreign Minister, that Denmark would raise no objection to Norwegian claims to Spitzbergen if Norway would not oppose Danish claims to Greenland at the Paris Peace Conference. A week after this conversation, in further negotiations, M Ihlen declared that Norway would 'not make any difficulty' concerning the Danish claim. The PCIJ found that the Spitzbergen question was interdependent on the Greenland issues and as such the Court found that a binding agreement existed between the two states.

4.2.1 Unilateral agreements

The matter was discussed in the *Nuclear Tests* cases (1974).[10] The cases arose out of opposition by New Zealand and Australia to atmospheric nuclear testing

7 Paul Reuter, *Introduction to the Law of Treaties*, 1989, London; Pinter Publishers at p 23.

8 (1966–II) *YBILC* at p 189.

9 PCIJ Ser A/B, No 53 (1933).

10 [1974] *ICJ Rep* at p 253.

carried out by France in the South Pacific. Australia and New Zealand brought proceedings before the ICJ but before any decision was made France indicated its intention not to hold any further tests in the region. The ICJ found that in the light of the French declaration it was no longer appropriate for it to give a decision on the merits of the case. In the course of its judgment, the ICJ declared:

> It is well recognised that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the state making the declaration that it should be bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the state being thenceforth legally required to follow a course of conduct consistent with the declaration.

4.2.2 Subjects of international law

Only those with international personality can be parties to treaties – effectively this means states and international organisations. Whilst the majority of treaties are concluded between states, it should already be clear that it is possible for international organisations to undertake treaty obligations. It is not possible under international law for private individuals or companies to enter into treaties. The nature and requirements of the subjects of international law are dealt with in detail in Chapter 5.

Agreements between states themselves create no problem here but a number of marginal cases are becoming increasingly common. Instead of states themselves the parties to an agreement may be other legal entities such as municipalities or public institutions. In such situations the question arises as to whether such bodies have the power to commit their state, and if they do not, the degree to which it can it be said that they have concluded a treaty. On the whole the problem is dealt with by application of the principles of agency and is resolved by looking at the extent to which the particular body can be implied to be acting as agent for the state concerned. Another problem arises in the case of agreements between states and entities which do not yet qualify as states (for example, national liberation organisations or provisional governments) but have been accorded some measure of international personality. In 1982 the Palestine Liberation Organisation issued a communication in which it purported to accede to the Geneva Conventions 1949 and additional Protocols dealing with the laws of war. Switzerland, as depository of the treaties, declined to accept the accession and sent a note to state parties declaring:

> Due to the uncertainty within the international community as to the existence or the non-existence of a state of Palestine and as long as the issue has not been settled in an appropriate framework, the Swiss government, in its capacity as depository ... is not in a position to decide whether this communication can be considered as an instrument of accession ... The unilateral declaration of application of the four Geneva Conventions and of the additional Protocol I made on 7 June 1982 by the Palestine Liberation Organisation remains valid.[11]

11 Embassy of Switzerland, Note of Information sent to States Parties to the Convention and Protocol, 13 September 1989.

While the Peace Treaty between Israel and Jordan (as in the case of the Camp David Agreements between Israel and Egypt) is clearly a treaty between states governed by international law in the sense of the 1969 Vienna Convention on the Law of Treaties, the legal nature of the agreements between Israel and the PLO is a matter of dispute. Some authors argue that '[t]he PLO's lack of status as a state precludes characterisation of the Declaration as a treaty or international convention, and hence as a hard law instrument in the traditional sense'.[12] It is suggested that it is 'rather an agreement between the state of Israel and the PLO, 'representing the Palestinian people' and that '[b]ecause the Declaration of Principles accepts some, but not all, elements of Palestinian statehood, Palestine may be considered a 'quasi-state' for purposes of the agreement; that is an entity enjoying certain prerogatives ordinarily reserved to states, but not fulfilling all of the traditional prerequisites for statehood'.[13] the same author concludes that, although the agreement is 'a soft law document in the traditional sense', it nevertheless is 'an agreement with considerable binding force' which 'appears on close analysis to embody a solid, substantive accord'.[14] Other authors have also expressed doubts (at least) on whether the Israel-PLO agreements are international instruments.[15]

> In the above view there is some confusion on two different issues which need to be distinguished in the analysis. The first issue concerns the law to be applied to the agreement, in particular, whether it is an agreement concluded under international law. The second issue is whether, or to what extent it is a legally binding or non-binding agreement, and what the legal consequences are.
>
> With regard to the first issue, it is correct that the PLO is not a state in the sense of international law and that it also does not represent any existing state of 'Palestine'. The establishment of a 'state of Palestine' was proclaimed with the Algiers Declaration of 15 November 1988 and it was recognised by many former communist states and developing countries which entered into diplomatic relations with the representatives of this state. However, this 'state of Palestine' does not fulfil one of the essential criteria under international law for the existence of a state because there is no effective sovereign control over the territory and population claimed to form the basis of the 'state of Palestine'.
>
> This does not mean that the Israel-PLO agreements cannot be treaties under international law. It is true that the 1969 Vienna Convention on the Law of Treaties only applies to treaties concluded between states. But that does not affect, as expressly acknowledged in Article 3 of the Convention, the legal validity of, and the application of international law rules on the law of treaties to, agreements concluded between states and other 'subjects of international law'. Independently of the attitude taken by Israel towards the PLO in the past, in international practice the latter has become recognised as a national liberation movement with the right to self-determination, which, although it does not exercise effective territorial jurisdiction, is a partial subject of international law with the capacity to maintain diplomatic relations with states and international

12 'The Israel-PLO Declaration of Principles: Prelude to a Peace?' (1994) 34 *Va J Int L* 435–69 at p 452.

13 *Ibid*, p 465.

14 *Ibid*, p 467.

15 See, for example, YZ Blum, 'From Camp David to Oslo' (1994) 28 *Israel LR* 211 at pp 212–13.

organisations recognising it and to conclude treaties. As a partial subject of international law, the PLO is not equal to a state, but that does not affect the validity of a treaty it concludes with a state.

Yehuda Blum argues that, even if one would be prepared to recognise that national liberation movements could have the status as subjects under international law, 'it does not necessarily follow that agreements entered by them become international agreements; partial and limited subjects of international law logically have only partial capacities under that law'.[16] This argument is not convincing for the following reasons. If the Israel-PLO agreements are not international agreements under public international law, then they must be governed by some national legal system, as in the case of so-called 'state contracts' concluded by a host state and a foreign company (unless, as more frequently in the past, a reference in the contract is made to international law as the governing law, which does not necessarily elevate the contract to the level of a treaty in the international law sense). Quite apparently, this would lead to absurd results.

Moreover, there are two clear indications in the agreements themselves that the parties consider them to be international agreements. First, there is express reference in some provisions that certain action has to be taken 'in accordance with international law'. Second ... the methods of disputes settlement provided for in the agreements are the typical ones of international law dispute settlement procedures. An additional argument can be found in the facts that the United Nations has endorsed the Israel-PLO Accord, that other states have signed as witnesses and that a multilateral international framework has been created in support of the Middle East peace process, all of which does not lend support to the view that the agreements are non-international ones. The agreements made between Israel and the PLO included the recognition by Israel of the PLO as the representative of the Palestinian people, and thereby are clearly governed by international law.

The second issue is: what kind of agreements are these under international law? Although the DOP is entitled 'Declaration' its content reveals that the parties did not want to enter into a mere 'gentleman's agreement' or just intended a declaration of policy. There is, furthermore, no reason to consider the text could be qualified as non-binding on the grounds that it lacks precision, in the sense that Judge Lauterpacht argued in his declaration attached to the judgment of the International Court of Justice in the *Sovereignty of Certain Frontier Land* case, namely that 'the ... provisions ... must be considered as void and inapplicable on account of uncertainty and unresolved discrepancy'.[17] First, the view held by some authors that the vagueness of treaty provisions may lead to the conclusion that these provisions are not legally binding is in itself incorrect. If the parties intended to conclude a treaty, then it is binding as a whole, even if some parts contain broad or unclear language. Vague provisions may give the parties a broad margin of discretion, but as Bernhardt notes, that is not to say that they are without legal significance and binding substance.[18] Secondly, even if one would like to take the contrary view, the detailed nature of many of the obligations laid down in the Israel-PLO agreements (especially after the DOP) clearly show that

16 YZ Blum, 'From Camp David to Oslo' (1994) 28 *Israel LR* 211 at p 213.

17 [1959] *ICJ Rep* 209 at p 231.

18 See R Bernhardt, 'Treaties' (1984) 7 *EPIL* 459–64 at p 461.

> the provisions are sufficiently clear and that the parties intended to enter into binding commitments and not merely concluded a non-binding agreement. This is less true with regard to the agreement to negotiate later on the permanent status. It is generally accepted that an obligation to take part in negotiations and to conduct them in good faith, may form the valid and practical object of an international undertaking.[19, 20]

4.2.3 An intention to produce legal effects

An analogy may be drawn with the requirement in municipal contract law of an intention to be bound. Agreements will not be legally enforceable as treaties if it can be shown that one or more of the parties did not intend that the agreement should create binding legal obligations. So, for example, the Final Act of the Helsinki Conference on Security and Co-operation in Europe 1975 provided that it was to be 'not eligible for registration [as a treaty] under Article 102 of the Charter of the United Nations' and throughout the conference it was understood by the participants that the Final Act would not be legally binding. Such agreements may create 'soft law' as discussed in Chapter 3.

4.2.4 Legal effects under public international law

Perhaps the most important requirement of a treaty is that it is an agreement 'governed by international law'. In 1962 the ILC started a detailed study of the law of treaties and the Special *Rapporteur*, Sir Humphrey Waldock, stated in his first report to the ILC that:

> The element of subjection to international law is so essential a part of an international agreement that it should be expressly mentioned in the definition. There may be agreements between states, such as agreements for the acquisition of premises for a diplomatic mission or for some purely commercial transaction, the incidents of which are regulated by the local law of one of the parties or by a private law system determined by reference to conflict of laws principles. Whether in such cases the two states are internationally accountable to each other at all may be a nice question; but even if that were held to be so – it would not follow that the basis of their international accountability was a treaty obligation.[21]

An illustration of this point is provided by the *Anglo-Iranian Oil Co* case (1952).[22] In that case, which arose after Iran had nationalised the oil industry, the UK sought to rely on an agreement made in 1933 between the Anglo-Iranian Oil Co and the government of Iran. The UK argued that the agreement was a treaty and therefore was binding on Iran. The argument was rejected by the ICJ which found that the agreement was nothing more than a concessionary contract between a government and a foreign corporation.

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19 Judge De Visscher in his dissenting opoinion to the ICJ's Advisory Opinion of 11 July 1950 on *South West Africa* [1950] *ICJ Rep* 186 at p 188.

20 P Malanczuk, 'Some Basic Aspects of the Agrements between Israel and the PLO from the Perspective of International Law (1996) 7 *EJIL* 485 at pp 488–91.

21 Sir Humphrey Waldock [1962] 2 *Yearbook of the International Law Commission* 32.

22 [1952] *ICJ Rep* p 1.

4.2.5 Designation

It should also be noted that the particular designation of the agreement does not govern its validity as a treaty – agreements may be entitled Conventions, Accords, Final Acts, Statutes, Exchange of Notes, Protocols – they are all to be regarded as treaties for these purposes. The designation given may however be of relevance in indicating the nature of the transaction. For example an 'agreement' is usually less formal than a 'treaty' and the term 'convention' will generally indicate a multilateral agreement.

4.3 Conclusion and entry into force of treaties

4.3.1 Accrediting of negotiators

Once a state has decided to create a treaty, it is necessary to appoint representatives to conduct the negotiations. It is necessary that such representatives should be fully accredited and given sufficient authority to conduct negotiations, and conclude and sign the final treaty. As a general rule such authority is contained in a formal document known as 'Full Powers' or often '*Pleins Pouvoirs*'. Full Powers can be dispensed with if practice between the negotiating states shows an intention to consider them as read and a gradual reduction in the use of Full Powers by states can be identified in the recent conduct of international relations.

In the case of multilateral agreements which are generally concluded at international conferences, the practice is for a committee to be set up to investigate the validity of the accreditation of all delegates.

Article 7 of the VCT reflects the rules in customary international law and in the *Legal Status of East Greenland* case (1933) the special position of foreign ministers as representatives for the purpose of entering into international agreements was expressly recognised by the Permanent Court.

If an unauthorised person were to enter into an agreement, his/her actions would be without legal effect unless subsequently confirmed by the state. Article 8 of the VCT 1969 provides a further safeguard against abuse by enabling a state to denounce an agreement entered into by an unauthorised person.

4.3.2 Negotiation and adoption

Negotiations concerning a treaty are conducted either through *pourparlers* in the case of bilateral treaties or at a diplomatic conference in the case of multilateral treaties. The negotiators will maintain contact with their governments and usually, before actually signing a treaty, they will obtain a new set of instructions indicating the manner of signature. The procedure at diplomatic conferences runs to a standard pattern with the appointment of committees and *rapporteurs* to manage the conference as efficiently as possible.

The aim of negotiation is the production of an agreed text of a treaty. The text is adopted by the consent of the parties. Article 9 of the VCT 1969 provides that the adoption of a treaty text at an international conference requires a two-thirds majority of those present and voting, unless a two-thirds majority decides otherwise. A common practice over recent years has been for the final text of

multilateral treaties to be adopted by a meeting of the relevant international organisation, for example, the UN General Assembly.

4.3.3 Authentication, signature and exchange

When the text of the treaty has been agreed upon and adopted, the treaty is ready for signing. Signing the treaty, which is usually a formal occasion, serves to authenticate the text. Signing is, therefore, essential to the validity of the treaty unless other methods of authentication have been agreed.

4.3.4 Effect of signature

The effect of signature depends upon whether the treaty is subject to ratification, acceptance or approval. If this is the case, then the signature means no more than that the delegates have agreed a text and have referred it to their governments for approval and ratification. Thus in the *North Sea Continental Shelf* cases (1969), although the Federal Republic of Germany had signed the Continental Shelf Convention 1958 it was not bound by its provisions since it had not ratified it. For this reason, Denmark and Holland had to base their arguments on rules of customary international law. In keeping with the general requirement of good faith, Article 18 of the VCT 1969 provides that where a state signs a treaty which is subject to ratification there is an obligation to do nothing to defeat the object of the treaty until the state has made its intentions clear. Sometimes the treaty will provide that it is to operate on a provisional basis as from the date of signature.

If the treaty is not expressed to be subject to ratification or is silent on the matter the treaty is binding as from the date of signature (Article 12 of the VCT 1969).

4.3.5 Ratification

The next stage, if necessary, is for the delegates to refer the treaty back to their governments for approval. Ratification is the approval by the head of state or government of the signature to the treaty. Article 2 of the VCT 1969 defines ratification as the international act whereby a state establishes on the international plane its consent to be bound by a treaty. Ratification does not have retroactive effect, so states are only bound from the date of ratification, not the date of signature.

It used to be thought that ratification was always essential, but that is no longer the case. Nowadays, it is a question of the intention of the parties as to whether ratification is a mandatory requirement.

It should be noted that the method by which ratification is actually accomplished is a matter for individual states. In the UK, although treaties are signed and ratified under the royal prerogative without the need for reference to Parliament, the practice is to lay the text of any treaty before both Houses of Parliament for 21 days before ratification (this practice is known as the *Ponsonby Rule*).

Generally, ratification has no effect until some notice of it is given to the other parties to the treaty. In the case of bilateral treaties, ratifications are simply exchanged between the parties. This is clearly impractical in the case of multilateral treaties, so multilateral treaties usually provide for the deposit of all

ratifications with one central body – in nearly all cases this function is performed by the Secretariat of the United Nations.

4.3.6 Accessions and adhesions

When a state has not signed a treaty it can only accede or adhere to it. Accession indicates that a state is to become a party to the whole treaty, whereas adhesion only involves acceptance of part of a treaty. Strictly speaking states can only accede or adhere to a treaty with the consent of all the existing parties. In practice, the consent of existing parties to accession is often implied.

4.3.7 Entry into force

When a treaty is to enter into force depends upon its provisions, or upon what the parties may otherwise have agreed. Treaties may be operative on signature, or on ratification. Multilateral treaties usually provide for entry into force only after the deposit of a specific number of ratifications, for example, Article 19 of the International Convention on the Elimination of all Forms of Racial Discrimination 1986 provides:

> This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

VCT 1969 itself entered into force after the receipt by the Secretary General of the 35th ratification. Sometimes a precise date for the entry into force of a treaty is given irrespective of the number of ratifications received.

4.3.8 Registration and publication

Article 102 of the United Nations Charter provides that all treaties entered into by members of the United Nations shall 'as soon as possible' be registered with the Secretariat of the United Nations and be published by it. A similar provision was laid down in Article 18 of the League of Nations Covenant. Failure to so register and publish the treaty will mean that the treaty cannot be invoked in any UN organ. Most significantly this would mean that a state would be unable to rely on an unregistered treaty in proceedings before the ICJ. This provision was included to try to combat the use of secret treaties which were considered to have a detrimental effect on international relations. Article 80 of the VCT 1969 provides that treaties shall, after their entry into force, be transmitted to the Secretariat of the UN for registration or filing and recording, as the case may be, and for publication.

In fact a considerable proportion of treaties are not registered. Paul Reuter suggests that statistical research based on the League of Nations and the United Nations Treaty Series shows that 25% of treaties have not been registered. Although the effect of non-registration of treaties has been discussed on a number of occasions before the ICJ, it is not possible to draw any definite conclusions.

4.4 Reservations

It can frequently happen that a state, while wishing to become a party to a treaty, considers that it can do so only if it can exclude or modify one or more particular provisions contained in the treaty. Ideally, such a state will be able to