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# *Charging for Access to International Law Treaty Information: Time for the UN to Rethink a Perverse Initiative*

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## **Abstract**

*Starting in 2000, the United Nations has begun to charge a hefty user fee to anyone, other than governments and diplomats, wishing to obtain access to its official electronic database of treaty information, which includes the texts of treaties, the list of states parties, and the official texts of reservations, etc. This new policy is not only entirely out of line with the approach applied more generally by the UN, but also with that of virtually every other international organization. Given the nature of the information as a public good and the strong policy arguments in favour of maximum dissemination and the ready accessibility of such information, the new policy is perverse and should be urgently reconsidered.*

From the perspective of international law the United Nations' celebration of the millennium has been marked by two oddly contradictory developments. On the one hand particular emphasis has been placed upon the central role that international law can play in building a better world, and the Secretary-General has almost ostentatiously put international treaties at the heart of this strategy through a campaign to promote the universal ratification of a core group of 25 multilateral treaties.<sup>1</sup> On the other hand, and at precisely the same moment, the UN Secretariat has moved to implement a policy which it had proposed several years earlier, as a result of which online access to (a) the text of treaties for which the UN is the depositary, (b) the current list of countries which are parties to those treaties, and (c) any reservations or declarations made, has been made heavily restrictive. This vital information, previously available at no cost, now requires lawyers, scholars, human rights, environmental and disarmament advocates, non-governmental organizations

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<sup>1</sup> In some respects, the move is a timely response to those academic commentators who have been challenging the validity of strategies seeking to promote universal ratification. For an analysis of some such suggestions in relation to human rights treaties, see Alston, 'Beyond "Them and Us": Putting Treaty Body Reform into Appropriate Perspective', in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000) 499.

and other users not only to go through the process of subscribing to a service but also of paying a hefty and prohibitive fee.

At the very same time, significant amounts of money have been spent on a promotional campaign to promote greater awareness of the importance of international law in general, and of international treaties in particular. All law school deans, apparently in every country of the world, received a letter from the UN's Legal Counsel emphasizing the importance of spreading 'knowledge of international law among the general public' and urging the deans to meet their 'responsibility in ensuring that international law is taught' in every law faculty.<sup>2</sup> In addition, the many thousands of members worldwide of the American Society of International Law have been sent, at UN expense, a 222-page booklet of which 20,000 copies were printed, in two languages, reproducing the text of the 25 so-called 'core' treaties.<sup>3</sup> The UN has also undertaken a major public information campaign to ensure broad public support for the Millennium Summit of world leaders and the Millennium Assembly.<sup>4</sup>

In his much-praised Millennium Report to the UN General Assembly ('We, the Peoples') Secretary-General Kofi Annan gave particular prominence within his 'Security Agenda' to the strengthening 'of respect for international law, and in particular the agreed provisions of treaties on the control of armaments and of international humanitarian and human rights law'.<sup>5</sup> In a personal letter to all world leaders, he noted enthusiastically that 'there has been a growing participation in the body of treaties most central to the spirit and goals of the Charter of the United Nations.' He went on to express the hope 'that the opportunity presented by the Summit will inspire a renewed enthusiasm for participation in these treaties by more States.'<sup>6</sup> The Secretariat wrote in equally glowing terms of the:

unique opportunity [for heads of state or government] to express support for, and rededicate themselves to the international legal framework consisting, as of 15 May 2000, of 514 multilateral treaties deposited with the Secretary-General (<http://untreaty.un.org/>). The majority of these treaties have been adopted by the General Assembly or concluded at plenipotentiary conferences convened by the organs of the United Nations.

The result of this push was announced with justifiable pride:

A total of 84 delegations (of which 59 were at the level of Head of State and Government) signed or deposited instruments of ratification or accession to 40 multilateral agreements, deposited with the Secretary-General of the United Nations. . . . A total of 273 treaty actions took place [from 6 to 8 September 2000] (187 signatures and 86 ratifications or accessions).<sup>7</sup>

<sup>2</sup> Corell, 'An Appeal to Deans of Law Schools Worldwide', reprinted in *American Society of International Law Newsletter*, July–August 2000, 1 and 3–4.

<sup>3</sup> 'Millennium Summit Multilateral Treaty Framework: An Invitation to Universal Participation', UN Doc. DPI/2130 (2000).

<sup>4</sup> 'Millennium Promotional Campaign: Report of the Secretary-General', UN Doc. A/AC.198/2000/10 (2000), available, free of charge, on the UN website at [www.un.org/millennium/documents/unics.htm](http://www.un.org/millennium/documents/unics.htm).

<sup>5</sup> Available, free of charge, on the UN website at [www.un.org/millennium/sg/report/key.htm](http://www.un.org/millennium/sg/report/key.htm).

<sup>6</sup> Letter of 15 May 2000, reproduced in 'Millennium Summit Multilateral Treaty Framework', *supra* note 2, at vii–viii.

<sup>7</sup> [www.un.org/millennium/treaties.html](http://www.un.org/millennium/treaties.html).

All of the information quoted above is available free of charge on the website but the user who wishes to obtain more details of the treaties or the status of their ratification is systematically referred to the website address of <http://untreaty.un.org>. There she will find a polite note indicating that universities, NGOs and individuals working on a non-profit basis can obtain access for a mere US\$500 a year. The fee doubles to US\$1,000 a year for 'commercial and for-profit entities', a category which includes not only corporations and law firms but also individual lawyers and consultants in private practice. However, if any potential subscriber is from a 'developing country' the subscription rate is reduced to only US\$250 a year. All of this contrasts with the announcement that all diplomatic missions, virtually every government department in the world, and most UN officials, will be given access entirely free of charge.

As a result, this pricing policy represents an exquisite irony. NGOs, academics, international lawyers and private citizens are required to pay a heavy subsidy in order to gain access to the fundamental texts of international treaty law so that an improved service can be made available to governments and the UN Secretariat. It is to be hoped that this is not what the Secretary-General means when he speaks, as he does so frequently, of civil society as an indispensable partner in all UN activities.

What then is the justification provided for this policy and to whom can the initiative be attributed? Here, at least, the website provides, free of charge, some of the information we need:

In Resolution 51/158 of 16 December 1996, the General Assembly endorsed the placing of the UN Treaty Collection on the Internet and made the recommendation that the Secretary-General explore the economic and practical feasibility of recovering the costs of providing such access.<sup>8</sup>

What this description of the resolution omits to mention is that the Assembly's endorsement of the latter proposition was made conditional upon 'Member States, organizations of the United Nations system, other international organizations *and other non-commercial users not being charged a user fee*'.<sup>9</sup> In other words, the original mandate from the Assembly envisaged that while fees might be recovered from commercial users of the service, it explicitly excluded the option of charging individuals or organizations which could be categorized as private, non-commercial, not-for-profit or educational users. That did not deter the Secretariat from putting forward a proposal with a very different impact, nor from stating on the website that the user fee is being charged '[i]n keeping with the expressed wishes of the Member States of the United Nations'.<sup>10</sup> As the story is told on the website:

In his note A/52/363 of 26 September 1997 to the General Assembly, the Secretary-General reported that: a) the online versions of the Multilateral Treaties Deposited with the Secretary-General and the United Nations Treaty Series involve high costs and additional costs which result from the need to maintain, update and improve the service; b) the revenues

<sup>8</sup> 'United Nations Treaty Collection: Subscription Information', at <http://untreaty.un.org/English/howtoreg.asp>.

<sup>9</sup> General Assembly Res. 51/158, 16 December 1996, para. 6 (emphasis added).

<sup>10</sup> See *supra* note 7.

generated from hard copy sales are inadequate to cover these costs and will increase as a result of their online availability; c) accordingly, it will be appropriate to charge a fee from users of the online version to generate revenues to fund at least the maintenance and improvement of the service.<sup>11</sup>

In fact, the report referred to contains only two-and-a-half pages devoted to the issue of user fees. It notes that the main users of the UN Treaty Collection, apart from governments, and international organizations, are ‘institutions such as universities, academic libraries, scholars and students, non-governmental organizations (NGOs) and private law firms’, and predicts that the provision of more comprehensive electronic access will lead to ‘an increase in the number of individual users (e.g., scholars and students)’.<sup>12</sup> The possibility of exempting those users from fees is never considered; indeed it seems to be assumed that they are the ideal market whose financial resources should be tapped in order to support the improved service sought for governments. The report observes at the end, without any analysis of the policy or other implications, that ‘if the fee-charging mechanism is to be economically feasible, fees should be levied from the widest group of users’.<sup>13</sup> The report thus contains no statement of the likely impact of user fees upon the access of students, scholars, NGO groups or civil society in general, no indication of the level of fees that might have been anticipated, and no useful estimate of the likely revenue.

Rather, the initiative is justified primarily by reference to general policy considerations:

The General Assembly has expressly approved the principle that, whenever it is desirable and possible, the sale of public informational material should be encouraged, not only because the proceeds go to the Working Capital Fund, but also because publications that are sold rather than distributed gratis usually command greater respect.<sup>14</sup>

This statement is in turn justified by a footnote to the 1992 Regulations for the Control and Limitation of Documentation.<sup>15</sup> It will come as a great relief to the increasing number of political scientists and international lawyers who are studying the question of why states comply with treaty obligations to know that international treaties will henceforth command greater respect because they are to be sold rather than given away free of charge!

The decision to charge a lower price for subscribers from developing countries results from an injunction by the Assembly that the policy devised by the Secretary-General should keep ‘in mind especially the needs of developing countries in recovering the costs thereof’.<sup>16</sup> A price which is equivalent to or more than the average per capita gross national product of at least 15 developing countries<sup>17</sup> would

<sup>11</sup> *Ibid.*

<sup>12</sup> UN Doc. A/52/373 (1997), para. 39.

<sup>13</sup> *Ibid.*, at para. 54.

<sup>14</sup> *Ibid.*, at para. 44.

<sup>15</sup> ‘Regulations for the Control and Limitation of Documentation Addendum: Pricing of United Nations Publications’, UN Doc. ST/AI/189/Add.15/Rev.1, 30 June 1992.

<sup>16</sup> General Assembly Res. 52/153 (1997) and 53/100 (1998).

<sup>17</sup> UNDP, *Human Development Report 2000* (2000) 204–05.

hardly seem designed to encourage maximum access, and all the more so at a time when the US dollar is at such a high level against all other currencies. The Secretariat report on user fees did not address the issue of whether users in developing countries could or should be given free access. It did, however, predict that 'the service will be used to a greater extent in developed countries than in developing countries for some years to come, since, at present, 70 per cent of Internet users are located in the United States of America and Europe'. It also noted that the UN's online Treaty Collection was, at the time, being accessed over 15,000 times a week.<sup>18</sup> There would seem to be a strong argument to be made to the effect that potential users in many developing countries would have virtually no access to hard copies of up-to-date materials and that electronic access would thus be the only realistic possibility. But such issues were simply not considered.

The arguments in favour of a cost recovery policy might perhaps be justified on several different grounds. One is that the resources available to the UN are clearly inadequate to its needs and that some means has to be found to supplement existing sources of funding. This is the only one invoked by the Secretariat in defence of their initiative. A second is that such a step is simply a reflection of developments at the national level in which user-pays policies are being implemented in relation to many public sector activities. A third is that anyone who needs to consult the text of an international treaty, or to know which countries are parties and on what terms must be sufficiently wealthy to be able to pay for that information. A fourth is that the information is available in other forms free of charge, such as in the hard copy volumes of *Multilateral Treaties Deposited with the Secretary-General* which are to be found in UN depositary libraries.

But the counter-arguments are difficult to ignore. The UN, for all its budgetary pressures, has failed to institute a user-pays fee in relation to almost any other information available on its website. Thus, while it continues to make freely available a vast and increasing amount of documentation, much of it of limited interest and some of dubious quality, it must be asked why this particular source of information has been singled out. Its commercial saleability is presumably one possible answer. The Secretariat report argued that this principle had already been adopted by the UN in other cases and cited the examples of the Monthly Bulletin of Statistics and access to the documents available on the UN's 'optical disk system' (ODS).<sup>19</sup> But neither of these examples is remotely comparable to the treaties database. Potential users of the statistical data are going to be primarily from a commercial or governmental background, or economists with a budget to support specific research efforts. The general public has very little 'need' for access. The same applies to the documents contained on the ODS which are, by definition, not placed on the freely available UN website because it is assumed that they are primarily of interest to specialists or to those doing advanced research and who would thus be in a position to pay for access if need be.

<sup>18</sup> UN Doc. A/52/373 (1997), para. 39.

<sup>19</sup> *Ibid.*, at para. 49.

In relation to the treaties database, the commercial value of the material seems much less obvious and, in any event, such users are likely to be far less frequent than those from civil society broadly defined. It would be helpful to see statistics, or surveys, which might confirm that the Secretariat has good grounds for assuming a heavy commercial use and for anticipating that a significant amount of fees will be generated. Presumably libraries in developed countries will be part of a captive market and this will generate some revenue. By the same token it will inevitably be the libraries of better off universities and the like that will subscribe while a vast number of other libraries from which users can obtain online access to the internet will either be unable to pay or will choose not to do so. But in any event, the bottom line is that the NGOs, individual researchers, advocates, activists and others who are best placed to make practical use of the standards that have been accepted by their own and other governments are no longer in a position to obtain access to the relevant instruments without paying a fee which is sizeable by any standards. Indeed, for the majority of them it may well be prohibitive and the UN Secretariat will have succeeded in achieving a singularly perverse result which is directly at odds with all of its fine words about promoting greater knowledge and awareness of international law.

At the very same time that access to the treaties materials is being effectively denied to a great many potential users, the UN is proceeding to put vast amounts of materials online in relation to initiatives such as Kofi Annan's Global Compact between business and the UN. The question of how these different priorities have been determined and how they can be justified seems not to have ever been addressed.

The policy would be easier to defend if it was in line with the considered judgment of other parts of the UN system and other international organizations in relation to comparable matters. Ironically, however, the UN's Treaty Secretariat proves to be the pace-setter in this particular race to the bottom. Until a couple of years ago the ILO charged for access to much of the jurisprudence generated by its supervisory bodies, but never, as far as I am aware, for access to its Conventions and Recommendations or the status of ratifications or acceptances. This policy was criticized at the time:

[The ILO] has developed an extensive and very sophisticated database, of major and direct relevance to various aspects of the work of the [UN's human rights] treaty bodies and the human rights field generally. But it has chosen only to make it available to external users by means of a CD-ROM which must be purchased and for which separate equipment, beyond a computer and an internet connection, must be acquired. One result, for example, is that the database is unavailable to any members of the treaty bodies, to NGOs or scholars unless they make an individual purchase at considerable expense.<sup>20</sup>

Subsequently, the great majority of the information contained in the database on international labour standards, known as ILOLEX, has been put online and is accessible free of charge to all users. A deluxe CD-ROM version which is still available at a price contains little that the average user would find indispensable.<sup>21</sup> No charge is

<sup>20</sup> 'Final Report on Enhancing the Long-Term Effectiveness of the United Nations Human Rights Treaty System: Note by the Secretary-General', UN Doc. E/CN.4/1997/74, para. 65.

<sup>21</sup> See <http://ilolex.ilo.ch>.

made by the Council of Europe or the Organization of American States for access to their treaty texts or status information. The same applies to UN agencies such as UNESCO<sup>22</sup> and even to an agency which derives much of its operating revenues from commercial fees — the World Intellectual Property Organization (WIPO).<sup>23</sup> All these organizations appear to operate on the assumption not only that they are performing a valuable and necessary public service but also that it is in their own interests to facilitate the widest possible dissemination of the texts that they have spent so much time, expertise and money in adopting. Even agencies such as the United Nations Development Programme (UNDP) and the World Bank which have in the past relied, and even insisted upon, the commercial distribution of their flagship annual reports — the Human Development Report and the World Development Report, respectively — now make these publications available free of charge on their websites. The reasoning can only be that the overriding objective is to maximize dissemination and that this is best achieved by making an electronic version available free of charge to those willing to go to the trouble of downloading it at their own expense.

Can the UN's policy be justified on the grounds that the information is anyway available free of charge elsewhere? There are, after all, various services run by universities and other networks which provide access to many of the texts. The problem is that users are being compelled to rely on sources which are not by definition authoritative, which may be difficult to find, and which may be out of date. Moreover, most of these services do not include information on the status of the treaties but instead carry a link to the only source which can possibly be up to date in that regard — the UN's Treaty Secretariat.

The service provided by the UN Secretariat is performed pursuant to its Charter obligations as a depositary. Article 102 provides that: '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.' Publication of the texts and of information relating to their status should thus be seen as core functions of the Secretariat and not as a commercial service from which revenue might be generated. As a public good, such information is in a completely different category from the public relations-type information for which the policy of cost recovery has been designed but is all too rarely applied.

At the end of the day it is difficult to see how this initiative differs from charging citizens for access to the laws of their own country. It can only be seen as a hindrance to the professed goal of promoting a better knowledge and understanding of international law. It is particularly perverse because it comes at a time when the relevance of international law within domestic legal systems is growing, as a result of

<sup>22</sup> See, for example, the comprehensive list of 'Conventions and Agreements of a Standard-Setting Nature Adopted Under the Auspices of UNESCO Solely or Jointly with other International Organizations', or the lists of Declarations and Recommendations adopted by the UNESCO General Conference, all available at [www.unesco.org/general/eng/legal/index.html](http://www.unesco.org/general/eng/legal/index.html).

<sup>23</sup> See, for example, WIPO's very extensive 'Collection of Laws for Electronic Access' (CLEA) database, available at [www.wipo.int/clea/en/index.html](http://www.wipo.int/clea/en/index.html).

which there should be an increasingly common need on the part of a diverse range of actors to refer to international treaties and to check on their status. Perhaps the greatest puzzle of all is how the initiative could have come not from member states seeking to reduce access to international legal standards which their citizens might seek to invoke against them, but from the very part of the UN Secretariat charged with responsibility for disseminating the standards and that it should be done in the guise of providing an enhanced service to the international community.