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Summary record of the 887th meeting

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
1966, vol. I(2)

110. Mr. BARTOŠ said that, in practice, errors in texts were usually discovered after the negotiators had dispersed. Cases had arisen where wrong expressions or mistakes in transcription or in translation had been discovered several years after a treaty had been concluded under the auspices of the United Nations.

111. In any case, he accepted the explanation which the Special Rapporteur had just given: since errors in texts were corrected by notification, it was possible to agree that the provision dealing with that matter should appear in that part of the draft articles which dealt *inter alia* with notifications.

112. Sir Humphrey WALDOCK, Special Rapporteur, said that errors were often discovered by a depositary. The point made by Mr. Bartoš would be met to some extent if the word " corrections " was inserted after the word " notifications " in the title of part VII.

The Special Rapporteur's amendment was adopted.

Part VII, as thus amended, was approved.

The rearrangement of the draft articles proposed by the Drafting Committee, as amended, was approved.

113. Mr. AGO suggested that the Commission authorize him to re-examine the French text, with the help of the Secretariat, in order to ensure that the terminology was uniform. For instance, the word " *terminaison* " was used in one part but not in others. He also asked whether the Special Rapporteur would be agreeable to the addition of the words " by a treaty " after the words " Consent to be bound " in the titles of articles 11, 12 and 13; that would ensure a closer correspondence between the English and French texts, for in French it was impossible to say " *consentement à être lié* " without adding the words " *par un traité* ".

114. Sir Humphrey WALDOCK, Special Rapporteur, said that he was prepared to accept the insertion of the words " by a treaty " after the words " consent to be bound " in the title of articles 11, 12 and 13, if that were needed for purposes of the French text.

115. Mr. RUDA requested the Commission to give Mr. Paredes and himself the same authority with respect to the Spanish text as Mr. Ago had asked for with respect to the French text.

116. The CHAIRMAN suggested that the authorization sought by Mr. Ago and Mr. Ruda to make drafting chages in the French and Spanish texts in consultation with the Secretariat, which would accord with the Commission's usual practice, should be given.

It was so agreed.

117. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee wished to recommend that the Commission incorporate in its draft report to the General Assembly a statement modelled on that made in paragraph 35 of the report covering the work of its thirteenth session.[10] In its recommendation concerning the convening of an international conference on consular relations, the Commission had stated:

" The chapters, sections and articles are headed by titles indicating the subjects to which their provisions refer. The Commission regards the chapter and section titles as helpful for an understanding of the structure of this draft. It believes that the titles of articles are of value in finding one's way about the draft and in tracing quickly any provision to which one may wish to refer. The Commission hopes, therefore, that these titles will be retained in any convention which may be concluded in the future, even if only in the form of marginal headings, such as have been inserted in some earlier conventions. "

118. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that it would be desirable to include a statement of that kind regarding the draft articles on the law of treaties, but that there was no need to mention marginal headings as full titles were more helpful.

The Drafting Committee's recommendation was approved.

The meeting rose at 1 p.m.

887th MEETING

Monday, 11 July 1966, at 3 p.m.

Chairman: Mr. Mustafa Kamil YASSEEN
later, Mr. Herbert W. BRIGGS

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Law of Treaties

(A/CN.4/186 and Addenda; A/CN.4/L.107, L.115)

(continued)

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 1 (Use of terms) [2]

Paragraph 2

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Committee's proposal for paragraph 2 of article 1.

2. Mr. BRIGGS, Chairman of the Drafting Committee, said that, as originally adopted in 1962, article 1, then entitled " Definitions ", had contained a paragraph 2 reading:

" 2. Nothing contained in the present articles shall affect in any way the characterization or classification of international agreements under the internal law of any State. "[1]

[10] *Yearbook of the International Law Commission, 1961*, vol. II, p. 92.

[1] *Yearbook of the International Law Commission, 1962*, vol. II, p. 161.

3. Some members of the Commission had expressed the view that that paragraph should be dropped, but certain governments in their comments now indicated that they would prefer to keep a saving clause on those lines. The Drafting Committee had examined the question and now proposed the following formulation for paragraph 2 of article 1, now entitled " Use of terms " :

" 2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State. "

4. Sir Humphrey WALDOCK, Special Rapporteur, said that, in their comments, some Governments had wanted the Commission to go even further and make the saving clause apply also to the actual procedures in internal law. In 1965, he had himself suggested a formula to meet that wish[2] but the Commission had not been prepared to accept such an extension of the application of the clause.[3] The Drafting Committee had therefore now proposed a reservation which referred only to the use of terms.

5. The CHAIRMAN, speaking as a member of the Commission, said that there was every justification for the paragraph, because it was possible in the same legal system to use the same terms with different meanings. The question had been the subject of lengthy discussion in connexion with private international law and it had been generally agreed that terms used in the rules of private international law could have a different meaning from terms used in the rules of internal law. There was therefore all the more reason for making it clear that the terms used in the draft articles were concerned only with the future convention on the law of treaties and in no way prejudiced the use of those expressions in the legal system concerned.

6. Mr. BARTOŠ said that he welcomed the provision, which seemed to him necessary. A convention, once ratified, became an integral part of the law of the country which had ratified it and in that case the expressions used acquired some currency, though only to the extent necessary for the purposes of the convention, whence the two provisos in the paragraph, the second of which referred to the internal law of a State; in his view that was a wise limitation.

7. He would vote for paragraph 2, subject to a review of the French text, which was somewhat inelegant.

8. The CHAIRMAN put to the vote paragraph 2 of article 1 on the understanding that the French text would be reviewed.

Article 1, paragraph 2, was adopted by 13 votes to none.

ARTICLE 29 (*bis*) (Notifications and communications)[73][4]

9. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed the following redraft for article 29 (*bis*) :

" *Notifications and communications* "

" Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the terms of the treaty or of the present articles shall :

(*a*) if there is no depositary, be transmitted directly to the States for which it is intended; or if there is a depositary, to the latter;

(*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 upon the latter State's having been informed by the depositary in accordance with article 29, paragraph 1 (*e*). "

10. The redraft contained a new sub-paragraph (*c*) that referred back to article 29, paragraph 1 (*e*), where it was specified that the functions of the depositary included " Informing the contracting States of acts, communications and notifications relating to the treaty ". The purpose of sub-paragraph (*c*) was to meet the concern of some members over the point of time at which a State would be legally regarded as having received a notification in those cases where there was a depositary.

11. Mr. TSURUOKA said he was glad the Drafting Committee had taken account of the misgivings expressed by Mr. Bartoš and himself at the 885th meeting. Sub-paragraph (*c*) undoubtedly improved the article as a whole, but he wished to propose the deletion from the introductory sentence of the words " of the treaty or ". If the words in question were not deleted, the only situation that would not be covered by the article, in cases where there was a depositary, was the situation where the treaty itself expressly stated that any notification should be made direct to the parties. If the intention was that it was only after a treaty had been interpreted that such a communication should be made directly to a party and not through the depositary, the proviso " Except as the treaty or the present articles otherwise provide " was insufficient.

12. Article 39, paragraph 1, stated that a treaty which contained no provision regarding its termination and which did not provide for denunciation or withdrawal was not subject to denunciation or withdrawal unless it otherwise appeared that the parties intended to admit the possibility of denunciation or withdrawal. The word " appears " seemed to mean that an attempt would have to be made to see whether, by means of interpretation, it could be established whether denunciation was permissible. Article 29 (*bis*) on the other hand stated : " Except as the treaty or the present articles otherwise provide ", a stipulation which, as he interpreted it, only contemplated one situation, namely, that where there was a depositary and where the treaty provided directly and positively that a State which was required to make a notification must address it directly to the parties.

13. A wide variety of notifications was to be found in treaties. For instance, article 11, paragraph 3 of the Convention on Consular Relations[5] referred to a noti-

[2] See *Yearbook of the International Law Commission, 1965*, vol. II, document A/CN.4/177.

[3] *Op. cit.*, vol. I, 778th meeting, paras. 12-59, and 820th meeting, para. 23.

[4] For earlier discussion, see 885th meeting, paras. 1-54.

[5] United Nations Conference on Consular Relations, *Official Records*, vol. II, p. 177.

fication regarding the appointment of the head of a consular post. Article 19, paragraph 2 of that Convention[6] required the sending State to notify to the receiving State the full name, category and class of all consular officers, other than the head of the post. There was also a reference to notification in article 19 of the Convention on Diplomatic Relations.[7] Was it suggested that all those notifications had to be transmitted through the depositary? Yet that was what a literal interpretation of article 29 (*bis*) implied.

14. The retention of the words " of the treaty " in the third line of the introductory sentence might lead to misunderstanding, whereas, if it were deleted, no harm would be done so far as the purpose of the article was concerned.

15. If the Commission agreed with him, it would also be necessary to make a slight change in the English text of article 19, paragraph 5, and to replace the words " after it was notified " by the words " after its having received the notification ". In addition, it would be necessary to insert in article 51, paragraph 2, between the words " three months " and " except in cases of special urgency ", the words " from the date on which the parties received the notification ".

16. Mr. BARTOŠ said the Special Rapporteur and the Drafting Committee were to be commended for having worded sub-paragraph (*c*) in such a way as to distinguish between two separate ideas, namely, the duty to make the notification and the effect of the notification on the State to which it was addressed.

17. Referring to Mr. Tsuruoka's objection, he said that he (Mr. Bartoš) understood the text in a different way. For him, the words " under the terms of the treaty " —which he considered necessary—indicated a general rule which should be applied when there was no special provision in the treaty. There were, in fact, three rules which could be applied in the present case—the provisions of the treaty as between the parties in a specific case; the rules contained in the draft articles on the law of treaties; and the general rule stipulating that a special rule must be applied. He approved those three rules, which were in accordance with practical requirements.

18. Mr. de LUNA said that he could accept sub-paragraph (*c*) as a compromise solution although it did not reflect existing practice. That practice was to regard the depositary as more than a mere letter-box; by a sort of legal fiction, the receipt of a notice by the depositary was considered as a notification to all the parties. The advantage of that system was that it avoided having a great many different dates on which a notification would become operative; the date would be the same for all the parties. Under the system in sub-paragraph (*c*), the operative date would be that on which each State concerned had been informed by the depositary; in a treaty with a large number of parties, there would be a large number of different dates for the various parties.

19. He had some doubts about the legal position between the moment when, under sub-paragraph (*b*), a notice was considered as having been made by the notifying State, and the moment when, under sub-paragraph (*c*), it was to be considered as received by the State for which it was intended, and would be glad to have some clarification on that point.

20. Mr. TSURUOKA said that there were three ways in which the question could be settled. Either the treaty stated rules that were different from those which the Commission was considering, or it stated no rules, or again it stated rules similar to or identical with those of the Commission. Article 29 (*bis*), however, only provided for exceptions in the first situation; it contained no provision covering the second situation, the situation where no rules were stated by the treaty. It provided that the notification or communication was to be made to the parties, but according to the proviso, the notification would have to be addressed to the depositary, which was what he wished to avoid.

21. Mr. AGO said that perhaps the difficulty to which Mr. Tsuruoka had drawn attention was due to a misunderstanding. The first reference to the treaty in article 29 (*bis*) constituted the normal safeguard, indicating that the rule would apply in cases where the treaty did not state a different rule. The purpose of the second reference to the treaty was to explain exactly what had to be done in cases where a State was responsible for making the notification or communication; it was stipulated that such notification or communication had to be made under the terms of the draft articles, but that it could also be made a responsibility of a State by a provision in the treaty itself. What had to be done in a situation where the treaty required a certain communication or notification to be made other than as the article provided? If the treaty provided not only that a notification had to be made but that it had to be made in a certain way, the case was covered. But if the treaty merely stated that that notification had to be made, and if that notification was of a supplementary nature not provided for in the draft articles but provided for in the treaty, why should not the residuary rule in article 29 (*bis*) apply? If the treaty did not specify how the communication was to be made, it should be possible to apply the general rule.

22. Mr. TSURUOKA said that, in the examples he had cited from the Conventions on consular and diplomatic relations, notification had to be made by a State and all communications and notifications addressed to a party or to the parties; a depositary existed, but there was nothing to show that the notifications had to be transmitted either through the depositary or through the interested parties. On the other hand, a literal interpretation of the introductory sentence of article 29 (*bis*) required any notification or communication to be made through the depositary; that did not seem to have been the intention of the parties to the Convention on Consular Relations, though that intention could only be deduced by interpretation.

23. Mr. BARTOŠ said that the depositary was neither a letter-box nor a general factotum. Many jurists mistakenly believed that a depositary provided a sort of accommodation address for relations between the parties. That was not so: a depositary was only responsible for all the acts necessary to safeguard the effect of a treaty.

[6] *Ibid.*, p. 178.

[7] United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 84.

24. It was necessary to differentiate between two kinds of notification; those which covered such matters as reservations and affected the actual substance of the treaty, and those which dealt with questions such as the appointment of a consul or a statement of an intention to open a diplomatic mission, which were not related to the substance of the treaty.

25. Mr. AGO said that, as he understood it, Mr. Tsuruoka's concern was with the situation where, although the treaty made no express provision, a particular intention might result from the interpretation of the treaty. If that understanding was correct, then Mr. Tsuruoka's misgivings were justified, but it seemed to him that the remedy was to make the first reference to the treaty more general; in other words, instead of a reference to the fact that a provision of the treaty might otherwise provide, what was needed was some such formula as " unless a different method is provided for by the treaty or by the present articles ".

26. Sir Humphrey WALDOCK, Special Rapporteur, said that in the examples given by Mr. Tsuruoka from the two Vienna Conventions, there would appear to be no doubt that the notification should be made by one party to another directly. Those cases would normally be covered by the interpretation of the terms of the treaty in accordance with their ordinary meanings.

27. In order to meet the point in cases that were less clear, he would suggest that the opening phrase of article 29 (*bis*) be amended to read:

> " Except as the present articles otherwise provide, or as may otherwise appear from the provisions of the treaty, any notification or communication to be made by any State . . . ".

28. Mr. TUNKIN said that the discussion had revealed the existence of a very real difficulty. There were two kinds of notifications: the first was notifications which concerned all the parties to a treaty, such as a notice of withdrawal, or a proposal for the amendment of the treaty, and the second was notifications relating to purely bilateral disputes between two parties to the treaty. It should be made clear that article 29 (*bis*) concerned only the first type of notifications, and that could perhaps be done by making the opening phrase refer to " any notification or communication intended for all the parties to the treaty ".

29. Mr. TSURUOKA said that either of the two suggested solutions would be satisfactory to him.

30. Mr. ROSENNE said that the point raised by Mr. Tunkin could perhaps be met by inserting the word " required " between the words " notification or communication " and the words " to be made ". That language would be closer to the French version and would exclude the bilateral type of communication; it would make it clear that the intention was to refer to those communications which were required to be made under the draft articles.

31. The CHAIRMAN, speaking as a member of the Commission, said that in his view the question was manifestly one of a notification affecting the law of treaties and the future of the treaty itself: it was a question of a notification relating to such questions as accession, ratification or reservations. Clearly, it had nothing to do with any notification called for by the terms of a particular treaty and affecting its application.

32. It would hardly be sufficient just to add the word " required " to the English text, for there were notifications that were required and were therefore compulsory, such as the communication of the name of an ambassador under the Convention on Diplomatic Relations, to which the article was not intended to refer and which did not affect the existence of the treaty.

33. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne's suggestion would not meet the situation. Some of the notifications covered by article 29 (*bis*) were not, strictly speaking, required to be made; a State would give notice of termination because it wished to terminate the treaty rather than because it was required to do so.

34. There were only two possibilities open to the Commission: either to drop the reference to the terms of the treaty in the opening phrase, or to adopt language such as that which he himself had proposed.

35. Mr. BRIGGS said that he would regret the deletion of the reference to the terms of the treaty, but would be prepared to accept the wording proposed by the Special Rapporteur.

36. With regard to the words " may otherwise appear from the provisions of the treaty " in the Special Rapporteur's proposal, he pointed out that the Drafting Committee would, at its next meeting, be considering the use of that and similar expressions throughout the draft articles.

37. Mr. CASTRÉN said that the Special Rapporteur's second solution, which was based on Mr. Ago's suggestion, was acceptable to him.

38. Mr. TUNKIN said that he was not certain that the language proposed by the Special Rapporteur would meet the point. In some cases, the other course would not appear from the provisions of the treaty; they would be cases where logic demanded that the matter should be placed on a bilateral basis without recourse to an intermediary.

39. He had in mind cases such as that of the violation of a treaty; in such an instance, the exchange of notes between the two States concerned should take place on a bilateral basis. There would, however, be nothing in the treaty to indicate that fact.

40. Mr. AGO said he believed that the difficulty mentioned by Mr. Tunkin could be settled simply by interpretation, in which common-sense was an indispensable element. But since the article was mainly concerned with communications and notifications relating to the existence of the treaty and not with those relating to the application of the treaty, the simplest course might be to adopt Mr. Tsuruoka's proposal to delete the words " of the treaty or " in the third line, thereby limiting the scope of the article to notifications provided for in the draft articles and leaving the other problems to be solved by interpretation of the treaty.

41. Mr. TUNKIN said he agreed that, in the circumstances, perhaps the best solution would be to drop the reference to the terms of the treaty.

42. Sir Humphrey WALDOCK, Special Rapporteur, said that he would be prepared to accept that solution, which would make article 29 (*bis*) refer only to notifications to be made under the draft articles themselves. The question of notifications or communications under the terms of the treaty itself would then be left to the interpretation of the treaty.

43. The CHAIRMAN put article 29 (*bis*) to the vote, subject to the deletion of the words " the terms of the treaty or of ".

Article 29 (bis), *as thus amended, was adopted by 16 votes to none.*

Recommendations of the Drafting Committee concerning use of terms and co-ordination of terminology

44. The CHAIRMAN invited the Commission to consider the Drafting Committee's recommendations on the use of certain terms in the draft articles.

45. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Committee had been disturbed to find that, over a period of five years, the Commission had in some instances used the same terms with different meanings in different articles. The Committee had considered, in particular, the use of the terms " Party ", " Contracting State ", " Negotiating State ", and " States concerned ".

46. Article 1 (*f*) (*bis*) defined the term " party " as used in the draft articles but no definition had yet been adopted for the term " contracting State ", which appeared in a considerable number of articles. The Committee had noted that the use of the latter term in the articles was far from uniform and that it covered three distinct categories of States: States which had consented to be bound by the treaty, States which had taken part in the drawing up and adoption of the text, and States entitled to become parties to the treaty. The Committee had also noted that the term " States concerned ", although sometimes used with the meaning " States in question ", was also used in certain cases to indicate the States which had taken part in the drawing up and adoption of the text. The Committee had concluded that the use of the term " States concerned " should be confined to cases where it was the equivalent of the term " States in question ". It had further concluded that four distinct categories of States should be distinguished in the drafting of the articles and identified by a uniform terminology. First, " negotiating State ", should be defined in article 1 as meaning " any State which took part in the drawing up and adoption of the text of the treaty "; secondly, " State entitled to become a party to the treaty ", should be used where appropriate but did not need a definition in article 1; thirdly, " contracting State " should be defined in article 1 as meaning " any State which has consented to be bound by the treaty, whether or not the treaty has entered into force "; and fourthly, " party " should be defined in article 1 as meaning " any State which has consented to be bound by a treaty and for which the treaty is in force ".

47. " Negotiating States " required to be distinguished from both " contracting States " and " parties " in certain contexts, notably whenever an article spoke of the intention underlying the treaty. " States entitled to become parties " was the appropriate term in certain paragraphs of article 29. " Contracting States " required to be distinguished both from " negotiating States " and " parties " in certain contexts where the relevant point was the State's expression of consent to be bound independently of whether the treaty had yet come into force. As to the term " party ", the Commission had already decided that, in principle, that term should be confined to States for which the treaty was in force. The Committee had noted that in certain articles, for example article 52, where the invalidity of the treaty was in question, a doubt might appear to exist as to the conformity of the Commission's use of the term in the article with the definition which it had adopted. The Drafting Committee had considered, however, that if the wording of the article specifically attached the term " party " to the " void " treaty and not simply to " the treaty ", the use of the term " party " would not be open to objection. The Committee proposed that the definition of " party " adopted at the second part of the seventeenth session should be slightly modified by changing the words " for which the treaty has come into force " to " for which the treaty is in force ".

48. The Drafting Committee therefore proposed that the Commission adopt the definitions of " Negotiating State ", " Contracting State " and " Party " which he had read out, and further proposed that it adopt a number of consequential amendments to the wording of draft articles 7, 11, 12, 17, 19, 20, 23, 24, 26, 28, 29, 30 (*bis*), 32, 33 and 34 (*bis*), which he would indicate separately.

49. Sir Humphrey WALDOCK, Special Rapporteur, said that " negotiating States " constituted an important category and the definition should be carefully examined. It should also be noted that, in certain contexts, the term " contracting State " covered " party " as well.

50. Mr. AGO said that he wished to draw attention to a change of some importance which the Drafting Committee proposed to make in the definition of a " party ". At the second part of the seventeenth session, the Commission had decided that a party was a State " for which the treaty has come into force ". The Drafting Committee now proposed that it should be a State " for which the treaty is in force ".

51. That was unquestionably a more accurate definition, for it was possible for a treaty to have come into force but to have ceased to be in force. The new definition would have practical consequences for the terms to be used by the Commission in the rest of the articles. Those consequences affected two kinds of situation.

52. The first was the situation where a treaty had apparently come into force but in fact had never done so because it was void *ab initio*. It would be necessary to find language to indicate that a State, though apparently a party to a treaty, was in fact not a party at all.

53. The second was the situation envisaged at several points in the draft, where a State retained certain obligations after it had ceased to be a party to a treaty. The Commission had frequently used the word " party " in such cases, but there again, so as to avoid contradicting itself, it would have to use some other expression such as " a State which has been a party ".

54. Mr. RUDA said that the three definitions proposed by the Drafting Committee were satisfactory but he wished to know whether the term " negotiating States " would cover States which, under the terms of article 6, paragraph 2, and even paragraph 3, had been among those that had voted against the adoption of a text requiring a two-thirds majority.

55. Sir Humphrey WALDOCK, Special Rapporteur, said it was a difficult point, but his answer would be in the affirmative. The definition was intended to cover the States responsible for drawing up the text and thus, as a corporate group, for producing the intention to be found in the text. It was not easy to find the right form of words because procedures at international conferences varied widely, and unless a roll-call vote were taken, it might be difficult to establish which States had, in fact, voted against. An explanation should be inserted in the commentary.

56. Mr. RUDA said that that had been his interpretation of the definition. An explanation in the commentary was certainly desirable.

57. Mr. de LUNA suggested that in all three language versions of the new definitions, the words " a State " be substituted for the words " any State ".

It was so agreed.

58. The CHAIRMAN put to the vote the Drafting Committee's three definitions as amended.

The Drafting Committee's three definitions were approved by 15 votes to none.

AMENDMENTS CONSEQUENT ON THE ADOPTION OF NEW DEFINITIONS

59. The CHAIRMAN invited the Commission to consider the consequential amendments the Drafting Committee wished to propose to the wording of certain draft articles following the adoption by the Commission of its recommendations concerning the definitions of " negotiating State ", " contracting State ", and " party ".

ARTICLE 7 (Authentication of the text) [9]

60. Mr. BRIGGS, Chairman of the Drafting Committee, said that in the opening paragraph of article 7, the Drafting Committee proposed the substitution of the words " the States participating in its drawing up " for the words " the States concerned " and in sub-paragraph (*a*) the substitution of the words " those States " for the words " the States concerned ".

The Drafting Committee's amendments to article 7 were approved.

ARTICLE 11 (Consent to be bound by a treaty expressed by signature) [10]

61. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed that, in paragraph 1 (*b*), the words " the negotiating States " be substituted for the words " the States concerned "; in paragraph 1 (*c*) the word " negotiation " be substituted for the word " negotiations ", and that in paragraph 2 (*a*) the words " negotiating States " be substituted for the words " contracting States ".

The Drafting Committee's amendments to article 11 were approved.

ARTICLE 12 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) [11]

62. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed that in paragraph 1 (*b*) the words " negotiating States " be substituted for the words " the States concerned " and that in paragraph 1 (*d*) the word " negotiation " be substituted for the word " negotiations ".

The Drafting Committee's amendments to article 12 were approved.

ARTICLE 17 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force) [15]

63. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed that in sub-paragraph (*a*) the words " these negotiations " be substituted for the words " the negotiations ".

The Drafting Committee's amendment to article 17 was approved.[8]

ARTICLE 19 (Acceptance of and objection to reservations) [17]

64. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed first, that in paragraph 2 the words " the negotiating States " be substituted for the words " the contracting States " and that the words " all the parties " be substituted for the words " all the States parties to the treaty " and secondly, that paragraph 4 (*c*) be redrafted to read: " An act expressing the State's consent to be bound by the treaty and subject to a reservation is effective as soon as at least one other contracting State has accepted the reservation ". That new wording did not entail any change of substance. The words " which has expressed its own consent to be bound by the treaty " had been dropped as they were now unnecessary with the adoption of the definition of a contracting State.

Mr. Briggs, First Vice-Chairman, took the Chair.

65. Mr. AGO said that it was impossible to say that an act expressing consent was " subject to a reservation ". The intention was to convey the idea that the act expressing consent contained a reservation. It would therefore be better to say " and containing a reservation " instead of " subject to a reservation ".

66. Sir Humphrey WALDOCK, Special Rapporteur, said that he was inclined to agree with Mr. Ago. The difficulty was due to the insistence by the French-speaking members of the Commission on the phrase " consent to be bound by the treaty ". That being so, the word " which " in the English text approved at the second part of the seventeenth session was ambiguous and had been replaced by the words " and subject to ". The problem could be solved, as suggested by Mr. Ago, by substituting the word " containing " for the words " subject to ", in the Drafting Committee's new text for paragraph 4 (*c*).

Mr. Ago's amendment was approved.

[8] For a later amendment to the text of article 17, see 892nd meeting, paras. 94 and 96.

The Drafting Committee's amendments to article 19 were approved with that change.[9]

ARTICLE 20 (Procedure regarding reservations) [18]

67. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " States entitled to become parties to the treaty " be substituted for the words " contracting States " in paragraph 1. That phrase was regarded as more appropriate to describe the recipients of the type of communications in question.

The Drafting Committee's amendment to article 20 was approved.

ARTICLE 23 (Entry into force of treaties) [21]

68. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating States " be substituted for the words " States which adopted its text " in paragraphs 1 and 2.

The Drafting Committee's amendments to article 23 were approved.[10]

ARTICLE 24 (Entry into force of a treaty provisionally) [22]

69. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating States " be substituted for the words " contracting States " in paragraph 1 (*b*).

The Drafting Committee's amendment to article 24 was approved.[11]

ARTICLE 26 (Correction of errors in texts or in certified copies of treaties) [74]

70. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating States " be substituted for the words " contracting States " in paragraphs 1, 2 (*a*) and (*c*), 4 (*a*) and 5.

The Drafting Committee's amendments to article 26 were approved.[12]

ARTICLE 28 (Depositaries of treaties) [71]

71. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating States " be substituted for the words " contracting States " in paragraph 1.

The Drafting Committee's amendment to article 28 was approved.

ARTICLE 29 (Functions of depositaries) [72]

72. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " States entitled to become parties to the treaty " be substituted for the words " contracting States " in paragraph 1, sub-paragraphs (*b*), (*e*) and (*f*).

The Drafting Committee's amendments to article 29 were approved.

ARTICLE 30 (*bis*) (Obligations under other rules of international law) [40]

73. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following revision of the title and text of article 30 (*bis*):

" *Obligations under other rules of international law* "

" The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present articles or of the terms of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law. "

74. Mr. AGO said he must again point out that the word " *terminaison* " in the active sense in which it was employed in the English version, did not exist in French and should be changed.

It was so agreed.

Subject to that amendment, the revised title and text for article 30 (bis) *were approved.*[13]

ARTICLE 32 (Specific restrictions on authority to express the consent of the State) [44]

75. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating States " in the plural be substituted for the words " contracting State ".

The Drafting Committee's amendment to article 32 was approved.

ARTICLE 33 (Fraud) [46]

76. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating State " be substituted for the words " contracting State ".

The Drafting Committee's amendment to article 33 was approved.

ARTICLE 34 (*bis*) (Corruption of a representative of the State) [47]

77. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that the words " negotiating State " be substituted for the words " contracting State " in the text of the new article 34 (*bis*) as approved at the 865th meeting.

[9] For a later amendment to the text of article 19, see 892nd meeting, para. 106.

[10] For a later amendment to the title of article 23, see 892nd meeting, para. 109.

[11] For a later amendment to the title of article 24, see 892nd meeting, para. 110.

[12] For subsequent reversal of this decision, see 894th meeting, para. 36.

[13] For a later amendment to article 30 (*bis*) (French text only), see 893rd meeting, para. 59.

The Drafting Committee's amendment to article 34 (bis) *was approved.*[14]

MODIFICATIONS TO ARTICLES APPROVED AT THE FIRST PART OF THE SEVENTEENTH SESSION

78. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that certain modifications to the articles approved at the first part of the seventeenth session (A/CN.4/L.115) were now necessary in the interests of clarity and precision.

ARTICLE 3 (*bis*) (Treaties which are constituent instruments of international organizations or which have been drawn up within international organizations) [4]

79. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the modification to article 3 (*bis*) did not affect the substance. The new text now proposed read:

"The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization."

80. It would be noted that the new formulation provided the necessary saving clause to cover cases when there was no relevant rule.

The Drafting Committee's new text for article 3 (bis) *was approved.*

ARTICLE 6 (Adoption of the text) [8]

81. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that paragraph 1 of the text adopted at the first part of the seventeenth session be kept unchanged, and that paragraphs 2 (*a*) and (*b*), and paragraph 3, which on reconsideration it had decided were unnecessary, be deleted. Those deletions would require some modification of paragraph 2 which it was now proposed should read:

"2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of those States participating in the conference, unless by the same majority they shall decide to apply a different rule."

The Drafting Committee's amendments to article 6 were approved.[15]

ARTICLE 7 (Authentication of the text) [9]

82. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed that sub-paragraph (*b*) be deleted and that the remaining text be modified to read:

"The text of a treaty is established as authentic and definitive:

(*a*) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(*b*) Failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text."

83. Mr. RUDA, referring to the new sub-paragraph (*b*), asked whether States that had voted against the adoption of the text but had taken part in its formulation were entitled to sign or initial the text or the Final Act.

84. Sir Humphrey WALDOCK, Special Rapporteur, said that in his opinion the question whether or not a State had voted against the adoption of the text was irrelevant. Even if a State had voted against the adoption of the text, it was still entitled to authenticate the text if it so wished.

85. Mr. RUDA said that if that were the case, it would seem more appropriate not to imply, as might be inferred from the definitions just approved, that there were two categories of States, whereas for purposes of the present article there was only one category, namely, the States which had participated in the drawing up of the text. In fact a text had to be adopted before it could be authenticated, signed, or initialled.

86. Sir Humphrey WALDOCK, Special Rapporteur, said that adoption and authentication might take place simultaneously—that was particularly true of small international conferences—and that the Drafting Committee's text was therefore more precise as far as the temporal factor was concerned. The distinction between adoption and authentication as separate stages in procedure had originated in the reports of Sir Gerald Fitzmaurice. According to the definitions just approved there were no "negotiating States" until the text had been adopted.

87. Mr. AGO said that it was necessary to bear in mind the definition of "negotiating State". By that expression the Commission meant a State which had taken part not only in the drawing up but also in the adoption of the text of the treaty. At the time when the procedure for the authentication of the text was being established, a State participated in the drawing up of the text but had not yet participated in its adoption, since the text was adopted at the time when the actual text was authenticated. If the Commission used the expression "negotiating State" in article 7 in the sense conveyed by its own definition of those words, it would be stating something that was inaccurate.

88. The CHAIRMAN,* speaking as a member of the Commission, said that the logical sequence of operations was first the drawing up of the text, secondly its adoption, and thirdly its authentication.

89. Mr. AGO said that the procedure for authentication might be established by agreement before the text was adopted. There was therefore no other solution than the expression proposed by the Drafting Committee.

The Drafting Committee's new text for article 7 was approved.

[14] For a later amendment to article 34 (*bis*) (French text only), see 893rd meeting, para. 74.

[15] For a later amendment to the text of article 6, see 892nd meeting, para. 87.

* Mr. Briggs.

ARTICLE 12 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) [11]

90. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 1 (*a*) of the words " or an established rule of an international organization ".

The Drafting Committee's amendment to article 12 was approved.

ARTICLE 18 (Formulation of reservations) [16]

91. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from sub-paragraph (*a*) of the words " or by the established rules of an international organization ".

The Drafting Committee's amendment to article 18 was approved.

ARTICLE 26 (Correction of errors in texts or in certified copies of treaties) [74]

92. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 2 (*c*) of the words " and, in the case of a treaty drawn up by an international organization, to the competent organ of the organization. "

The Drafting Committee's amendment to article 26 was approved.

ARTICLE 29 (Functions of depositaries) [72]

93. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 1 (*b*) of the words " or by the established rules of an international organization ".

94. Mr. TSURUOKA said that the words " the competent organ of that organization " were still used in article 19, paragraph 3, whereas everywhere else any reference of that kind had been dropped. In his view it would be useful to retain those words in that paragraph but he wished to know if that was what the Drafting Committee intended.

95. Sir Humphrey WALDOCK, Special Rapporteur, explained that the Drafting Committee had thought it necessary to retain a reference to an international organization in article 19, paragraph 3, because at the initial stage its constituent instrument might not contain rules about the acceptance of and objections to reservations, so that the provisions of the draft articles could usefully fill a gap. Reference to a competent organ of an international organization was needed in article 29, paragraph 2, because of the functions it might have to fulfil as a depositary.

The Drafting Committee's amendment to article 29 was approved.

The meeting rose at 6 p.m.

888th MEETING

Tuesday, 12 July 1966, at 11 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Draft report of the Commission on the work of its eighteenth session

(A/CN.4/L.116 and Addenda)

1. The CHAIRMAN invited the Commission to consider the draft report on the work of its eighteenth session.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the commentaries to the draft articles had been produced under conditions of stress; a good deal of editorial work would have to be done on them by the Secretariat and by himself after the Commission had completed its work.

3. There was, however, a general question on which he wished to have the Commission's guidance: it related to the references to legal literature contained in the footnotes. In the final report, references to Secretariat documents and to reports of previous special rapporteurs would, of course, have to be retained. The question, however, arose whether the Commission would wish to retain in its final report references to authors, for example where a publication contained evidence of practice, such as Hackworth's *Digest*, the *Harvard Research Draft* and Kiss's *Répertoire*.

4. Mr. TUNKIN said he was glad the Special Rapporteur had raised a question on which it was essential that the Commission should take a decision. References to legal literature were appropriate in a Special Rapporteur's report but should be avoided in the Commission's final report. Mention of certain writers could give the impression that the Commission had taken no account of the works of others. Since the Commission was an organ of the United Nations and of the General Assembly, its final report should only contain references to official documents and official compilations of State practice.

5. Mr. BRIGGS said that he could not agree with Mr. Tunkin. References to official documents should be retained, but the footnotes should also indicate the material relied upon both by the Special Rapporteur and by the Commission itself. The works mentioned in those footnotes represented the material subsumed in the commentaries. It should be remembered that the final report would be read by the delegations to the General Assembly, some of which did not include among their members persons with a long training in international law. References in the footnotes to legal writings would be of great assistance to those delegations. If it were decided to confine references to official documents, that would eliminate such essential material as McNair's standard