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UNITED NATIONS CONFERENCE
ON THE LAW OF TREATIES

COMMENTS AND AMENDMENTS TO THE FINAL DRAFT ARTICLES
ON THE LAW OF TREATIES SUBMITTED IN 1968 IN ADVANCE
OF THE CONFERENCE IN ACCORDANCE WITH GENERAL
ASSEMBLY RESOLUTION 2287 (XXII)

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COMMENTS AND AMENDMENTS SUBMITTED BY STATES

7. HUNGARY.

Transmitted by a letter dated 14 March 1968 from the
Permanent Representative to the United Nations

The Government of the Hungarian People's Republic greatly appreciates the draft articles on the law of treaties prepared by the International Law Commission and considers it a suitable basis for discussion by the Conference of Plenipotentiaries on the Law of Treaties. If the work of that Conference results in the conclusion of a general multilateral convention on the law of treaties, it will be an outstanding achievement of the United Nations in the field of the progressive development and codification of international law. To promote the work of the Conference of Plenipotentiaries, the Hungarian Government submits the following comments on the draft prepared by the International Law Commission.

Article 1

In the Hungarian view, Article 1 can be omitted because the definition of the term "treaty" in Article 2 makes the scope of a convention on the law of treaties wholly clear.

Article 2

It is deemed advisable to complete paragraph 1 (a) with the following sentence: "A stipulation submitting some aspects of such an agreement to the rule of municipal law does not change its character of treaty."

Following paragraph 1 (a), a definition of the term "general multilateral treaty" is proposed on the basis of the ILC draft of 1962 as follows: "General multilateral treaty" means a multilateral treaty which concerns general norms of international law or deals with matters of general interest to States as a whole."

In paragraph 1 (d) the insertion of the word "multilateral" between "approving a" and "treaty" is proposed, making the text read as follows: "... when signing, ratifying, acceding to, accepting or approving a multilateral treaty ..."

As appears from the title of Section 2 of Part II, the draft refers only to reservations made to multilateral treaties. The fact is that a reservation to a bilateral treaty, as explained in the first paragraph of the commentary to Articles 16 and 17, is no reservation but a proposal reopening the negotiations between the two parties.

Also in paragraph 1 (d) the insertion of the words "or to interpret" between "to vary" and "the legal effect" is proposed, making the text read as follows: "... whereby it purports to exclude, to vary or to interpret the legal effect ...". According to the Hungarian view, a statement made by one State and considered by it to be an interpretation may invite objection from another State and will thus have the legal effect of a reservation.

Article 5(a)

The insertion of a new article is proposed running as follows:

"Article 5(a) Participation in a treaty. Every State may become a party to general multilateral treaties."

The Hungarian Government shares the widely accepted view that it is to the general good that all States should become parties to general multilateral treaties, and that in a world community of States no State should be excluded from participation in general multilateral treaties.

Article 6

In paragraph 1 it is proposed that the words "negotiating or" be inserted between "for the purpose of" and "adopting", making the text read as follows: "... for the purpose of negotiating or adopting or authenticating the text of a treaty ..."

The insertion of the words "negotiating or" after "for the purpose of" is proposed also in paragraphs 2 (b) and 2 (c).

In paragraph 2(c) the words "to an organ of an international organization" should be replaced by the phrase "to an international organization or to any of its organs".

Article 11

In paragraph 1(d) it is proposed that the last phrase, reading "or was expressed during the negotiation", be omitted.

Article 12

It is proposed that the article be completed with a paragraph marked (d) reading as follows: "(d) The treaty is a general multilateral treaty". To a treaty of such a character, in accordance with Article 5(a), every State has the right to become a party, inter alia, by accession.

If paragraph 1(d) of Article 2 is modified as proposed above, the title of Section 2 of Part II should read simply "Reservations".

Article 17

The period of twelve months provided for in paragraph 5 is held to be too long, a period of 90 days should suffice.

Article 18

Paragraph 2 should be completed with the following sentence: "If the reservation is not confirmed on the date of ratification it shall be considered invalid".

The provision of paragraph 3 should be replaced by the following text: "An express acceptance of or an objection to a reservation does not require confirmation even if the reservation itself does".

Article 19

In paragraph 1 the insertion of the words "other than an interpretative reservation" is proposed after the first words of the paragraph. The text would then read: "A reservation other than an interpretative reservation established with regard to another party..."

Paragraph 2 should begin as follows: "A reservation mentioned in paragraph 1 does not modify..."

Paragraph 3 should be renumbered 4 and a new paragraph 3 is proposed reading as follows: "In the case of an interpretative reservation the treaty shall be interpreted accordingly with respect to the reserving State and the States accepting that reservation."

Article 20

It is proposed that in paragraph 1 the words "in writing" should be inserted after the words: "a reservation may be withdrawn at any time."

Articles 27 and 28

The observations made on Article 69 of the 1964 draft are maintained with regard to these articles.^{1/} It is also suggested that these articles be completed with a provision to the effect that if none of the means of interpretation has brought a satisfactory result, a restrictive interpretation shall be applied in view of the principle of State sovereignty.

Article 41

It is proposed that the words "subject to paragraph 3" be inserted in the concluding phrase of paragraph 2, making it read as follows: "except as provided in the following paragraphs or, subject to paragraph 3, in article 57."

^{1/} See comments by Hungary in the Annex to the Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session (A/6309/Rev.1), General Assembly Official Records, Twenty-first session, Supplement No. 9.

Article 53

The insertion of a new article is suggested reading as follows:

Article 53 (a): Termination of or withdrawal from a treaty having entered into force provisionally. In respect of a treaty that has entered into force provisionally (see art. 32), a contracting State may at any time announce that it does not wish to be bound by that treaty. In this case a bilateral treaty shall be terminated forthwith and a multilateral treaty becomes invalid between the announcing State and the other contracting States."

Article 60

It is proposed to insert the words "or consular" after the words "severance of diplomatic" in both the title and text of this article.

Article 69

In view of the provision in the first sentence of paragraph 1 of Article 39, it is proposed that the phrase "from the outbreak of hostilities between States parties to the treaty", be inserted after the words "in regard to a treaty".