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82nd meeting of the Committee of the Whole

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

together with the Australian amendment (A/CONF.39/C.1/L.245).

It was so agreed. [13]

Article 63 (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty) *(resumed from the 74th meeting)*

78. The CHAIRMAN invited the Committee to consider the Swiss amendment to article 63 (A/CONF.39/C.1/L.349 and Corr.1).

79. Mr. WERSHOF (Canada) said he must point out that at the 74th meeting the Committee had approved article 63 and referred it to the Drafting Committee, together with the amendment by Switzerland.

80. The CHAIRMAN said that the Swiss delegation had since agreed that its amendment should be put to the vote. He would therefore put it to the vote immediately.

The amendment by Switzerland (A/CONF.39/C.1/L.349 and Corr.1) was rejected by 43 votes to 11, with 33 abstentions.

Article 63 was approved and referred to the Drafting Committee. [14]

The meeting rose at 1 p.m.

[13] For resumption of the discussion of article 39, see 83rd meeting.

[14] For resumption of the discussion of article 63, see 83rd meeting.

EIGHTY-SECOND MEETING

Thursday, 23 May 1968, at 3.20 p.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

TEXT PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Committee to consider the texts of various articles proposed by the Drafting Committee.

Article 41 (Separability of treaty provisions) [1]

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 41 by the Drafting Committee, subject to a decision on the Finnish amendment (A/CONF.39/C.1/L.144) to delete the reference to article 50 in paragraph 5, which had been referred to it by the Committee of the Whole at its 66th meeting and which was a question of substance with which the Drafting Committee had considered that it was not competent to deal, read as follows:

"*Article 41*

" 1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

" 2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 57.

" 3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

" (*a*) the said clauses are separable from the remainder of the treaty with regard to their application;

" (*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole; and

" (*c*) continued performance of the remainder of the treaty would not be unjust.

" 4. In cases falling under articles 46 and 47, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

" 5. In cases falling under articles 48, 49 and 50, no separation of the provisions of the treaty is permitted."

3. In paragraph 1, the Drafting Committee had adopted two amendments which seemed to improve the wording. The first was the United Kingdom amendment (A/CONF.39/C.1/L.257) to insert the adverb " only " after the past participle " exercised ", instead of between the words " may " and " be "; that affected only the English version. The Drafting Committee had made a similar change in the position of the adverb " only " in paragraph 2 and in the first part of paragraph 3.

4. The second was an amendment by Argentina (A/CONF.39/C.1/L.244) to replace the words " *podrá ejercerse únicamente* " in paragraph 1 by the words " *no podrá ejercerse sino* "; it affected only the Spanish version. The Committee had made similar changes in paragraphs 2 and 3 of the article. Other changes of a drafting nature had also been made in the Spanish version of the article.

5. The Drafting Committee had made two changes in paragraph 3. In the first line of the English version, it had replaced the word " alone " by the word " solely " and inserted it after the word " relates " and, following the United Kingdom amendment (A/CONF.39/C.1/L.257 and Corr.1), had added at the beginning of sub-paragraph (*b*) the clause " it appears from the treaty or is otherwise established that ". The Drafting Committee had not made any change in sub-paragraph (*c*), which the Committee of the Whole had added to paragraph 3 by adopting a United States amendment (A/CONF.39/C.1/L.260).

6. In paragraph 4, again following the United Kingdom amendment, the Drafting Committee had transferred the expression " Subject to paragraph 3 " to another part of the sentence. If it had been left at the beginning of the sentence, as in the International Law Commission's text, it might have given the false impression that it governed the application of articles 46 and 47.

[1] For earlier discussion of article 41, see 41st, 42nd and 66th meetings.

7. Mr. CASTRÉN (Finland) said that his delegation had proposed (A/CONF.39/C.1/L.444) that the reference to article 50 in paragraph 5 be deleted so that the principle of separability should also apply in the case of nullity *ab initio* of a treaty conflicting with a rule of *jus cogens*. He did not propose to repeat the arguments in support of that amendment, but would request that it be put to the vote.

8. Sir Francis VALLAT (United Kingdom) said that his delegation would have preferred the vote on the amendment to be deferred to the second session of the Conference, in order to allow Governments time to consider the matter carefully. In its view, the reference to article 50 in article 41, paragraph 5, was not essential and even entailed a danger, since it would enable a party to use a relatively unimportant conflict of a treaty provision with a peremptory norm of international law as a pretext for repudiating the entire treaty. The arguments in favour of the Finnish amendment were based on reason and sound practical considerations. If the Committee was to vote on that amendment, his delegation hoped that it would not be rejected.

9. The CHAIRMAN said he would put to the vote the Finnish amendment (A/CONF.39/C.1/L.144) to delete the reference to article 50 in article 41, paragraph 5.

At the request of the Ghanaian representative, the vote was taken by roll-call. Cuba, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Denmark, Finland, France, Ireland, Italy, Japan, Mexico, Monaco, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, San Marino, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Austria, Belgium, Canada, China.

Against: Cyprus, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kenya, Kuwait, Liberia, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania, Sierra Leone, Singapore, Spain, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Congo (Brazzaville).

Abstaining: Dominican Republic, Ethiopia, Federal Republic of Germany, Gabon, Greece, Guatemala, Israel, Lebanon, Liechtenstein, Malaysia, Nepal, Panama, Republic of Korea, Republic of Viet-Nam, Trinidad and Tobago, Brazil, Costa Rica.

The Finnish amendment was rejected by 39 votes to 27, with 17 abstentions.

10. The CHAIRMAN said he would now put to the vote article 41 as proposed by the Drafting Committee.

Article 41 was approved by 72 votes to none, with 11 abstentions.

Article 67 (Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law)[2] *(resumed from the 75th meeting)*

11. The CHAIRMAN invited the Committee to resume its consideration of article 67 of the International Law Commission's draft. At its 75th meeting, it had decided to defer consideration of the two amendments by Finland (A/CONF.39/C.1/L.295) and Mexico (A/CONF.39/C.1/L.356) until it had taken a decision on article 41, and that it had just done. He would therefore ask the Committee to vote on the two amendments. Paragraph 1 of the Finnish amendment had been disposed of by the rejection of the Finnish amendment to article 41, paragraph 5.

12. Mr. BISHOTA (United Republic of Tanzania) said it seemed to him that, since the Committee had now rejected the Finnish amendment to article 41, paragraph 5, paragraph 2 of the Finnish amendment to article 67 automatically lapsed also.

13. Mr. HARRY (Australia) said that paragraph 2 of the Finnish amendment to article 67 raised the problem of the relationship of that article not only to article 50, but also to article 61, and since no notice had been given of the intention to discuss article 67 at the present meeting, his delegation was not in a position to discuss the problem adequately.

14. Mr. BARROS (Chile) requested that the meeting be suspended to enable delegations to study the amendments.

15. After a brief suspension, the CHAIRMAN announced that the Finnish delegation had withdrawn its amendment (A/CONF.39/C.1/L.295), so that the Committee was left with only the Mexican amendment (A/CONF.39/C.1/L.356) to consider.

16. Mr. SEPULVEDA AMOR (Mexico) said that his delegation also withdrew its amendment.

17. The CHAIRMAN said that, if there were no objections, he would take it that the Committee approved article 67 as it stood.

It was so agreed.

TEXTS PROPOSED BY THE DRAFTING COMMITTEE

Article 42 (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty)[3]

18. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 42 by the Drafting Committee read as follows:

"*Article 42*

"A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 43 to 47 inclusive or articles 57 and 59 if, after becoming aware of the facts:

(*a*) it shall have expressly agreed that the treaty, as the case may be, is valid or remains in force or continues in operation; or

(*b*) it must by reason of its conduct be considered as having acquiesced, as the case may be, in the validity of the treaty or in its maintenance in force or in operation."

19. Since the Committee of the Whole had deleted the reference to article 58 in the first sentence, the Drafting

[2] For earlier discussion of article 67, see 75th meeting.

[3] For earlier discussion of article 42, see 42nd, 66th and 67th meetings.

Committee had replaced the word " to " by the word " and " before the figure 59, and had deleted the word " inclusive " after that figure. It had also made a few drafting changes in the Spanish version.

20. Mr. JAGOTA (India) said that his delegation wished to correct the vote it had cast at the 67th meeting, when a vote had been taken by roll-call on the eight-State amendment to delete sub-paragraph (*b*) of article 42 (A/CONF.39/C.1/L.251 and Add.1-3). By mistake, it had voted in favour of deleting the sub-paragraph, whereas in fact it had been in favour of its retention.

21. Mr. CARMONA (Venezuela) said that it was clear from the vote on the eight-State amendment to delete sub-paragraph (*b*) of article 42—where the number of votes in favour plus the number of abstentions had equalled the number of votes against—that there was considerable opposition to the text now before the Committee and that it represented the views of only about half the participating States. His delegation accordingly reserved the right to raise the matter again at the second session of the Conference and wished the statement he had just made to appear in the summary record of the meeting.

22. Mr. HARRY (Australia) suggested that the word " inclusive ", after the words " articles 43 to 47 ", be deleted. It did not appear after the words " articles 16 to 20 " in article 14, which the Committee of the Whole had already approved, and its presence in article 42 might lead to the assumption that the expression, which denoted a group of articles, had a different meaning in article 14.

23. Mr. YASSEEN, Chairman of the Drafting Committee, said the drafting matter raised by the Australian representative was one of those questions that could be settled when the definitive text of the convention was prepared.

Subject to that reservation, article 42 was approved.

Article 68 (Consequences of the suspension of the operation of a treaty) [4]

24. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 68 by the Drafting Committee read as follows:

"*Article 68*

" 1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

" (*a*) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

" (*b*) does not otherwise affect the legal relations between the parties established by the treaty.

" 2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty."

25. The Drafting Committee had made only one change in article 68: in paragraph 2, it had replaced the expression " to render ... impossible " by " to obstruct ", so as to preclude any confusion with the impossibility of performance dealt with in article 58. Moreover, it had thought that the new wording reflected more faithfully the underlying idea of that article. It had not considered it necessary to adopt the Mexican amendment (A/CONF. 39/C.1/L.357), the intention of which was covered by the new wording.

Article 68 was approved.

Article 69 (Cases of State succession and State responsibility) [5]

26. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 69 by the Drafting Committee read as follows:

"*Article 69*

" The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States."

27. The Committee of the Whole had approved the idea expressed in two amendments, by Hungary and Poland (A/CONF.39/C.1/L.279) and Switzerland (A/CONF.39/C.1/L.359) respectively, to mention the case of hostilities in the text of article 69. The Drafting Committee had preferred the wording proposed by Hungary and Poland, and had therefore added at the end of the article the words " or from the outbreak of hostilities between States ".

28. In the French version, it had replaced the expression " *au sujet d'un traité* " by the expression " *à propos d'un traité* ", which some members had considered more elegant. In the English version, it had replaced the expression " are without prejudice to any question " by the expression " shall not prejudge any question ", which had seemed more suitable in the context and closer to the terms used in the other language versions. It had not made any other change in the International Law Commission's text.

Article 69 was approved.

Article 70 (Case of an aggressor State) [6]

29. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 70 by the Drafting Committee read as follows:

"*Article 70*

" The provisions of the present convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression."

30. In order to be consistent with article 69, the Drafting Committee had made article 70 begin with the words " The provisions of the present convention ". In the Spanish version it had placed the word " *originarse* " after the word " *pueda* ".

Article 70 was approved.

[4] For earlier discussion of article 68, see 75th meeting.

[5] For earlier discussion of article 69, see 76th meeting.

[6] For earlier discussion of article 70, see 76th meeting.

Article 71 (Depositaries of treaties) [7]

31. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 71 by the Drafting Committee read as follows:

"*Article 71*

" 1. The depositary of a treaty, which may be one or more States or an international organization or the chief administrative officer of such an organization, is designated by the negotiating States in the treaty or in some other manner.

" 2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force as between certain parties or that a difference has appeared between a State and a depositary shall not affect this obligation of the depositary."

32. The Committee of the Whole had approved the principle that one or more States might be designated as the depositary of a treaty, as proposed in the Bulgarian, Romanian and Swedish (A/CONF.39/C.1/L.236 and Add.1) and Finnish (A/CONF.39/C.1/L.248) amendments. The Drafting Committee had preferred the wording of the Finnish amendment and had incorporated it in the text of paragraph 1. It had also added in paragraph 1 the words " or the chief administrative officer of such an organization ", in accordance with the decision of the Committee of the Whole. The verb of the main clause in paragraph 1 had been put in the present tense in order to make it quite clear that there was no obligation to designate a depositary.

33. In paragraph 2, the Drafting Committee had added a second sentence based on the amendments by the Byelorussian SSR (A/CONF.39/C.1/L.364) and Mongolia (A/CONF.39/C.1/L.368) which had been concerned not with article 71, but with article 72, and which the Committee of the Whole had approved. The Drafting Committee had been of the opinion that the idea expressed in those amendments related more to the principle that the depositary was under an obligation to act impartially in the performance of his functions. Since that principle had already been stated in paragraph 2 of article 71, the Drafting Committee had added to that paragraph, in a shortened form, the idea expressed in those two amendments.

34. Mr. RATTRAY (Jamaica) said he noted that the designation of a depositary was not compulsory under the terms of article 71. Unfortunately, the wording of the article was clumsy; in fact he doubted whether the English text of paragraph 1 was grammatically correct. The International Law Commission's text was almost preferable, despite the difficulties it had raised.

35. Mr. HARRY (Australia) said that although he was satisfied with article 71 as far as its substance was concerned, he, too, had doubts about its wording. In paragraph 2, the clause " or that a difference has appeared between a State and a depositary " was very obscure when divorced from its previous context in article 72, where it had been clear that the difference had concerned the performance of the functions of the depositary. The words " In particular " at the beginning of the second sentence in paragraph 2 should be deleted, as the sentence did not relate to a particular case in relation to what preceded it. He hoped that the entire article would be carefully revised at the earliest opportunity.

36. Mr. DADZIE (Ghana) asked whether the Drafting Committee had considered using the expression " may be designated " in paragraph 1, and if so, why it had abandoned the idea.

37. Mr. YASSEEN, Chairman of the Drafting Committee, said he agreed that the text of article 71 might appear to be clumsy, but the Drafting Committee's task of incorporating several amendments in the article had not been an easy one. Above all, the Drafting Committee had tried to ensure that the wording fully reflected the intention of the Committee of the Whole.

38. His reply to the Ghanaian representative's question was that the Drafting Committee had felt that it could render the meaning inherent in the word " may " by using the present tense, in other words, by substituting the word " is " for the words " shall be " in the English version.

39. Mr. ROSENNE (Israel) said that, as he understood it, paragraph 1 stated the rule that it was the responsibility of the negotiating States to designate the depositary of a treaty. If that was the meaning of the paragraph, the drafting difficulties could undoubtedly be overcome by making the words " The negotiating States " the subject of the sentence.

40. Mr. MARESCA (Italy) said that the first text proposed for paragraph 2 by the Drafting Committee (A/CONF.39/C.1/12) had been a noticeable improvement on the International Law Commission's text because the words " contracting States " had been used and not " parties ". According to sub-paragraphs (*f*) and (*g*) of article 2, there was a difference between a contracting State and a party. A treaty might not have entered into force for a contracting State, whereas it must have entered into force for a party. Consequently, the correction (A/CONF.39/C.1/12/Corr.1) did not accord with the definitions contained in article 2.

41. The CHAIRMAN suggested that the Drafting Committee be asked to re-examine the text of article 71 at the present session, in the light of the comments of the Committee.

42. Mr. MWENDWA (Kenya) said he thought it would be better to use the expression " certain of the parties " instead of " certain parties " in paragraph 2. He supported the Chairman's suggestion.

43. Mr. YASSEEN, Chairman of the Drafting Committee, said he agreed that the formulation of paragraph 1 was not perfect, but the paragraph did state comprehensively the rule that the depositary was designated by the negotiating States.

44. Replying to the Italian representative's comments, he said it was clear from the amendments that the question concerned certain States for which the treaty had not entered into force in their relations with certain other parties, for reasons connected, for example, with the problem of recognition: but those States were parties to the treaty vis-à-vis the remainder of the States. The

[7] For earlier discussion of article 71, see 77th and 78th meetings.

Drafting Committee could accept the Chairman's suggestion that article 71 be re-examined.

Article 71 was referred back to the Drafting Committee.

Article 72 (Functions of depositaries) [8]

45. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 72 by the Drafting Committee read as follows:

"*Article 72*

" 1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

" (*a*) preparing the original text for signature in the languages specified;

"(*b*) keeping the custody of the original text of the treaty and of any full powers delivered to it;

" (*c*) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

" (*d*) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

" (*e*) examining whether the signature, or any instrument, communication or notification relating to the treaty is in due and proper form, and if need be, bringing the matter to the attention of the State in question;

"(*f*) informing the parties and the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

"(*g*) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;

" (*h*) registering the treaty with the Secretariat of the United Nations;

" (*i*) performing the functions specified in the other provisions of the present Convention.

" 2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the organization concerned."

46. The Committee of the Whole had made many amendments to article 72 and the Drafting Committee, in turn, had made a few drafting changes, consequent upon the incorporation of the amendments. The Committee of the Whole had included in paragraph 1 the new sub-paragraph proposed in the United States amendment (A/CONF.39/C.1/L.369). The new sub-paragraph, which had become sub-paragraph (*a*), added to the functions of the depositary that of " preparing the original text for signature in the languages specified ".

47. The Drafting Committee wished to point out that that provision, which it had left unchanged in the text of article 72, was liable to create serious difficulties. In the first place, the word " preparing " might be interpreted as conferring on the depositary a certain responsibility for the actual drafting of the treaty and for the exact agreement of the authentic texts in all the languages. In the second place, the preparation of the original text for signature was in many cases the responsibility, not of the depositary, but of the State or international organization which had assumed the functions of secretary of the conference or meeting which had prepared the treaty. The Drafting Committee therefore asked the Committee of the Whole to consider whether paragraph 1, sub-paragraph (*a*), should not be deleted. Such deletion would in no way prevent a depositary from performing the functions in question because the opening sentence of paragraph 1 stated that " The functions of a depositary ... comprise *in particular* ".

48. In sub-paragraph (*b*), the Committee of the Whole had deleted the words " if entrusted to it " and had approved the addition of the following words " and of full powers, instruments of ratification, accession, acceptance or approval and notifications communicated to it "; the Drafting Committee had simplified that addition by expressly mentioning the full powers in sub-paragraph (*b*) and adding in sub-paragraph (*d*), before the words " any instruments ", the phrase " receiving and keeping custody of ". It had thought that the word "instrument" was sufficiently broad to justify dispensing with a list which would make the text unnecessarily heavy.

49. Also in sub-paragraph (*b*), the Committee of the Whole had approved an express reference to amendments to treaties, as requested by Finland (A/CONF.39/C.1/L.249) and Mexico (A/CONF.39/C.1/L.373). The Drafting Committee had thought that such reference was unnecessary, since either the amendment would be incorporated in the treaty, in which case it was covered by sub-paragraph (*b*), or it would be a separate instrument and was thus covered by sub-paragraph (*d*).

50. The Drafting Committee had incorporated the amendments by Mongolia (A/CONF.39/C.1/L.368) and the Byelorussian SSR (A/CONF.39/C.1/L.364).

51. Mr. BINDSCHEDLER (Switzerland) said he also considered that sub-paragraph (*a*) was unrealistic and might create difficulties. He suggested that it be deleted.

52. Mr. KEARNEY (United States of America) said that his delegation did not regard the sub-paragraph as important and could therefore agree to its deletion.

53. Mr. WERSHOF (Canada) said that sub-paragraph (*e*) of the Drafting Committee's text resulted from the amendment to sub-paragraph (*d*) of the International Law Commission's draft. The difference between sub-paragraph (*d*) and the new sub-paragraph (*e*) was that the latter omitted any express mention of reservation and replaced the words " is in conformity with the provisions of the treaty and of the present articles " by " is in due and proper form ". At the seventy-seventh meeting, he had asked the Expert Consultant to confirm his delegation's understanding of the International Law Commission's intention that, when a reservation was clearly prohibited by sub-paragraphs (*a*) or (*b*) of article 16 of the Convention, the depositary had the right and duty to bring that matter to the attention of the

[8] For earlier discussion of article 72, see 77th and 78th meetings.

reserving State. The Expert Consultant had confirmed that such was the meaning that should be attributed to the International Law Commission's text. He now wished to ask the representative of the Secretary-General whether that was indeed the practice of the Secretary-General. The reason he asked that question was that his delegation did not approve the new wording of that sub-paragraph and might ask the Committee of the Whole to reconsider its decision at the second session.

54. The CHAIRMAN said that, if there were no objection, he would take it that the Committee approved the Drafting Committee's text for article 72, subject to the deletion of sub-paragraph (*a*).

It was so agreed.

Article 73 (Notifications and communications) [9]

55. Mr. YASSEEN, Chairman of the Drafting Committee, said that neither the Committee of the Whole nor the Drafting Committee had made any change in article 73 of the International Law Commission's text, which read as follows:

"*Article 73*

" Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention 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 72, paragraph 1 (*e*)."

Article 73 was approved.

Article 74 (Correction of errors in texts or in certified copies of treaties) [10]

56. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had simply incorporated in article 74 the amendments adopted by the Committee of the Whole, so that the text now read as follows:

"*Article 74*

" 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 otherwise decide, be corrected:

" (*a*) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

" (*b*) by executing or exchanging a separate 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:

" (*a*) 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 may be raised;

" (*b*) if on the expiry of the time-limit no objection has been raised, 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;

" (*c*) if an objection has been raised to the proposed correction, shall communicate the objection to the signatory States and to the contracting States.

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

" 4. (*a*) The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

" (*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

" 5. Where an error is discovered in a certified copy of a treaty, the depositary shall execure a *procès-verbal* specifying the rectification and communicate a copy to the signatory States and to the contracting States."

Article 74 was approved.

Article 75 (Registration and publication of treaties) [11]

57. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 75 by the Drafting Committee read as follows:

"*Article 75*

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

" 2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the paragraph above."

58. The Committee of the Whole had approved a new text for article 75, divided into two paragraphs. In paragraph 1, the Drafting Committee had merely made a few drafting changes. It had replaced the expression " Treaties shall, after their conclusion " by " Treaties shall, after their entry into force ", since treaties were in fact registered when they entered into force. It had also inserted the words " as the case may be ", because a treaty could not be transmitted at the same time for registration and for filing and recording. In paragraph 2, it had shortened and simplified the wording by deleting the list of juridical persons who might be designated as depositaries. The list was cumbersone because the

[9] For earlier discussion of article 73, see 78th meeting.

[10] For earlier discussion of article 74, see 78th meeting.

[11] For earlier discussion of article 75, see 79th meeting.

Committee of the Whole had added to it the expressions " one or more States " and " chief administrative officer ", and in any case was superfluous, because it already appeared clearly in article 71.

59. Mr. KHLESTOV (Union of Soviet Socialist Republics) said there was an error in the Russian version of article 75. In paragraph 1, the words " registration, filing and recording " should read " registration or filing and recording ". He had also noted a number of translation errors in other articles, which should be corrected by the secretariat.

60. Mr. BISHOTA (United Republic of Tanzania) asked the Chairman of the Drafting Committee whether his Committee had studied the question raised at the seventy-ninth meeting by the representative of Jamaica, namely, whether there was any contradiction between article 75, paragraph 2, and article 72, paragraph 1. Article 72, paragraph 1, allowed for the possibility of an exception concerning the functions of the depositary, in the clause " unless otherwise provided in the treaty or agreed by the contracting States ". It was therefore possible that the functions listed would not necessarily be attributed to the depositary.

61. Mr. YASSEEN, Chairman of the Drafting Committee, said that, under the United Nations Charter, States were required to register their treaties with the United Nations Secretariat. The intention in article 75 had simply been to stress that the depositary, by the very fact of being designated as depositary, was authorized to register treaties with the United Nations. There was therefore no incompatibility between article 75 and article 72.

Article 75 was approved.

The meeting rose at 5 p.m.

EIGHTY-THIRD MEETING

Friday, 24 May 1968, at 10.55 a.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

TEXTS PROPOSED BY THE DRAFTING COMMITTEE *(continued)*

1. The CHAIRMAN invited the Committee to resume its consideration of article 71, which at the previous meeting had been referred back to the Drafting Committee. After that, there remained only to consider the texts proposed by the Drafting Committee for article 39 and articles 61 to 65.

Article 71 (Depositaries of treaties) [1]

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text now proposed for article 71 by the Drafting Committee read as follows:

"*Article 71*

" 1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

" 2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation."

3. The Drafting Committee had considered the suggestions by Canada regarding paragraph 1 and by Chile regarding the whole article, together with the comments of a number of delegations, and had now submitted a new text for the article which it believed to be clearer and better drafted than the earlier text. It had been unable to accept the Australian suggestion that the words " In particular " at the beginning of the second sentence of paragraph 2 be deleted, because that might give the impression that the two applications of the principle stated in the sentence were the only ones; by retaining those words, the Drafting Committee was emphasizing that they were only two among many.

4. Mr. JAGOTA (India) said he appreciated the reasons for replacing the expression " contracting States " in the second sentence of paragraph 2 by the expression " certain of the parties ". Unfortunately, that replacement was not satisfactory either, because under paragraph 1 (*g*) of article 2, the use of the term " party " implied that the treaty must be in force with respect to some parties. The difficulty might be avoided by replacing the expression " certain of the parties " by the expression " certain States ".

5. The CHAIRMAN said that the Indian representative's comment would be noted. If there were no objection, he would take it that the Committee approved article 71.

Article 71 was approved.

Article 39 (Validity and continuance in force of treaties) [2]

6. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 39 by the Drafting Committee read as follows:

"*Article 39*

" 1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

" 2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty."

7. At its eighty-first meeting, the Committee of the Whole had adopted a French oral amendment to transfer the second sentence of paragraph 1 of article 39 to article 65. In the remaining sentence of the paragraph

[1] For earlier discussion of article 71, see 77th, 78th and 82nd meetings.

[2] For earlier discussion of article 39, see 39th, 40th, 76th and 81st meetings.