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Twenty-fourth plenary meeting

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

exempted from the general application of the convention on the law of treaties. On the other hand, that exemption was rightly limited to the case of an aggressor State, for any aggression was an extremely grave crime. The rule in article 70 covered two kinds of treaties, those which might be imposed upon an aggressor State and those previously concluded by an aggressor State, which might be terminated, suspended or modified regardless of the will of the aggressor State.

21. Mr. GROEPPER (Federal Republic of Germany) said that his delegation had abstained in the vote on article 70 for the reasons it had given at the 76th meeting of the Committee of the Whole.

The meeting rose at 11.35 a.m.

TWENTY-FOURTH PLENARY MEETING

Wednesday, 14 May 1969, at 4.25 p.m.

President: Mr. AGO (Italy)

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)

Motion for immediate consideration of articles 62, 62 bis, 63 and 64

1. Mr. SHUKRI (Syria) said that he was anxious to introduce a motion which he hoped would not cause any inconvenience to the President or to other delegations, for it was prompted solely by a desire to bring the Conference to a speedy and successful conclusion.

2. At the 22nd plenary meeting,¹ the President had suggested, and the Conference had agreed, that discussion of the crucial question of article 62 *bis* should be postponed in the hope that a compromise might be worked out to the satisfaction of all participants or to the overwhelming majority of them. The Syrian delegation had welcomed that decision. The Conference was deeply divided on article 62 *bis*, one side firmly believing in the automatic compulsory jurisdiction of a third party and the other convinced that, despite the praiseworthy underlying motives of compulsory jurisdiction, such a procedure should not at the present stage be imposed on States, which should be left to work out a settlement according to any agreed procedures, including arbitration and adjudication.

3. His delegation unfortunately did not feel optimistic about the prospects of a compromise, and time was running short. It therefore saw no reason to postpone the discussion any longer and formally moved that articles 62, 62 *bis*, 63 and 64 be discussed and voted on forthwith. That course would serve to dispel the tense atmosphere prevailing in the Conference and would

help it to adopt a convention which could be signed by as many States as possible.

4. Mr. KRISHNA RAO (India) said he supported the Syrian representative's motion. He would point out that the programme of meetings in the *Journal* for 14 May did not mention articles 71 to 75, although the Drafting Committee had been asked to submit its texts of these articles for the current meeting. Delegations were fully prepared to discuss articles 62 and 62 *bis*, annex I and articles 63 and 64.

5. Mr. YAPOBI (Ivory Coast) said he was surprised at the statements of the two previous speakers. The usual practice was to set aside articles which raised particular difficulties and to deal first with less controversial provisions, in order to allow time for negotiations with a view to reaching a compromise solution. The Syrian motion could only lead to a hasty vote on article 62 *bis*, which was absolutely vital to the convention, and he therefore opposed it.

6. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he agreed with the Indian representative that the Conference should follow the programme set out in the *Journal* for 14 May and begin at once to consider articles 62 and 62 *bis*. The question at issue was obviously that of compulsory jurisdiction. A large number of delegations opposed to the introduction of that notion in the convention had for long endeavoured to find a compromise solution, but the intransigent attitude of the other side had remained unchanged; indeed, one delegation seemed to be determined to prevent a satisfactory solution. The Conference must proceed to discuss the question and vote on it in the short time available.

7. Mr. ESCHAUZIER (Netherlands) said that his delegation had been involved in unofficial consultations with the preceding speakers and respected their motives, although it held a different opinion. It would be regrettable if delegations were obliged to proceed forthwith to vote on articles 62 and 62 *bis* in the form in which they had been submitted, for there still seemed to be a limited possibility of compromise with regard to article 62 *bis*. Explorations in that direction were continuing, as all delegations must be aware. He would not formally oppose the Syrian motion, but felt bound to make a statement on behalf of the original sponsors of the amendment (A/CONF.39/C.1/L.352/Rev.3 and Add.1 and 2 and Corr.1) that had led to the adoption of article 62 *bis* in the Committee of the Whole.

8. The sponsors had reconsidered their position on many occasions in a spirit of compromise and in the light of objections to the compulsory arbitration clause. They could imagine a possible compromise if those opposing compulsory jurisdiction as now set out in article 62 *bis*, which applied to the whole of Part V of the convention, would be willing to consider accepting that jurisdiction in a more limited area of Part V by selecting a number of articles which they would be willing to submit to compulsory jurisdiction. If such an offer were put forward by the other side, he was

¹ Para. 81.

sure that the sponsors would consider it very seriously with a view to achieving a solution of a seemingly intractable problem, not so much by concession or compromise, which were bound to be unsatisfactory to both parties, but through a meeting of minds on restricted compulsory jurisdiction, which would still offer sufficient protection to those States which attached great importance to it, without, however, causing undue concern to those who had strong misgivings concerning compulsory jurisdiction applicable to the whole of Part V. He therefore appealed to those delegations to give serious consideration to an offer made in a spirit of sincere good faith and co-operation by the original sponsors of article 62 *bis*.

9. Mr. REDONDO-GOMEZ (Costa Rica) said that the limited time remaining at the Conference's disposal should be devoted to seeking a definitive solution on substantive differences, not to procedural discussions. He saw no point in voting at once on so controversial a matter as article 62 *bis*. In his experience as representative of his country to the United Nations, excellent solutions had sometimes been found at the eleventh hour. The Conference should therefore deal with the remaining non-controversial articles and leave more time for reaching a satisfactory solution that would be in the common interest.

10. Mr. KRISHNA RAO (India) said he could not agree with the representative of the Ivory Coast that to adopt the Syrian motion would be a departure from the usual practice. It had been agreed at the 22nd plenary meeting not to consider articles 62, 62 *bis*, 63 and 64 at the morning meeting on 14 May, but to continue with other articles, while trying in the meantime to reach a compromise solution. Proposals and counter-proposals had been advanced and rejected. The Netherlands delegation had made commendable efforts towards a genuine compromise, and various approaches, including the one the Netherlands representative had just described, had been discussed. Nevertheless, the question now before the Conference was not one of substance, but whether the articles in question should be discussed forthwith. Having complied with the President's suggestion that the discussion should be deferred, certain delegations were now convinced that the time had come to debate the issue in the Conference and to vote on the articles. Even the representative of the Ivory Coast had referred only to article 62 *bis* as being controversial, and the Conference should proceed now to discuss article 62.

11. Mr. MUTUALE (Democratic Republic of the Congo) said that, in view of the statements just made by the representatives of the Ivory Coast and the Netherlands declaring their willingness to negotiate with a view to reaching a compromise solution, the Conference should postpone the discussion of articles 62 and 62 *bis* and proceed with article 71.

12. Mr. DE CASTRO (Spain) said that the majority appeared to be in favour of proceeding first with the non-controversial articles in the hope that with a little more time it might be possible to reach a compromise solution on article 62 *bis*. Moreover, there were other subjects to be considered which were closely connected

with article 62 *bis*, namely, the Final Clauses and the questions of reservations and universality. Those subjects were of such importance that a supreme effort must be made to reach agreement; and with that in view, his delegation had submitted a draft resolution and an amendment to the Final Clauses (A/CONF.39/L.38, A/CONF.39/L.39), which might make it possible to adopt a system of reservations in connexion with article 62 *bis* which would be satisfactory to all delegations. He therefore urged that the Conference follow the procedure suggested by the President and consider first the non-controversial articles.

13. Sir Francis VALLAT (United Kingdom) said that during the preceding week real and earnest attempts had been made to reach an agreed solution on articles 62 and 62 *bis*, and it was very discouraging for those delegations which had expressed their willingness to make concessions to be told now that they were being obstructive and intransigent. The inference he drew was that there might indeed be no point in further postponement of the discussion of articles 62 and 62 *bis*, but he would acquiesce in whatever procedure the President considered most suitable and least likely to engender heated discussion.

14. Mr. KEARNEY (United States of America) said that the idea of proceeding to an immediate discussion and vote on article 62 *bis* caused him some concern, since he was not yet entirely clear about all the proposals made in connexion with that article. On the other hand, he sympathized with those delegations who felt that the matter had already dragged on long enough, and suggested that the Conference fix a definite time, say the following day, at which to take up article 62 *bis*.

15. Mr. SHUKRI (Syria) said he felt obliged to point out that article 62 *bis* was not new; it had been proposed at the first session and discussed at length in the Committee of the Whole at the second session. He could see no advantage in a delay of a further few hours, since all delegations had already received their instructions by which they would be bound, and since the "package deal" which had been worked out as a compromise was definitely rejected by a number of the States participating in the Conference.

16. The PRESIDENT said he would put to the vote the Syrian motion that the Conference proceed immediately to discuss articles 62 and 62 *bis*.

The Syrian motion was rejected by 49 votes to 31, with 25 abstentions.

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE (*resumed from the previous meeting*)

Statement by the Chairman of the Drafting Committee on articles 71-75

17. Mr. YASSEEN, Chairman of the Drafting Committee, said that articles 71 to 75 constituted Part VII of the draft convention.

18. The Drafting Committee had not made any changes in the text of articles 71 although there had been some criticism of the term "parties", which appeared in

the passage "the fact that a treaty has not entered into force between certain of the parties". The Committee considered that the use of that term was justified in the context because the passage dealt essentially with a situation in which two States were parties to the same treaty but, for some reason, the treaty had not entered into force in the relations between those two States.

19. A change affecting all the language versions had been made in article 72, paragraph 1 (b), dealing with the functions of depositaries. In the text approved by the Committee of the Whole, the sub-paragraph read: "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". The Drafting Committee had considered that the meaning of the expression "original text" was clear; it obviously meant any official text prepared in one or more languages. The expression "any further text", on the other hand, could lead to misunderstanding. The Committee had therefore decided to clarify the meaning by adding the words "of the treaty".

20. The Drafting Committee had also noted a discrepancy between the Russian and Spanish versions of paragraph 1 (b) on the one hand, and the English and French versions on the other. In the English and French versions, the depositary was required to prepare the texts in the additional languages, whereas according to the Russian and Spanish versions, he was only required to prepare copies of such texts. The Committee had considered that the English and French versions reflected the intention of the Committee of the Whole and had therefore made the necessary corrections in the Russian and Spanish texts.

21. No change had been made in the text of article 73.

22. In article 74, some members of the Drafting Committee had criticized the wording of the concluding portion of the introductory clause of paragraph 1 as approved by the Committee of the Whole, which read "the error shall, unless they otherwise decide, be corrected." That wording could create the impression that the signatory States and the contracting States, after having noted the existence of an error in the text of the treaty, could decide not to correct it. In order to dispel that impression, the Drafting Committee had replaced the words in question by: "the error shall, unless they decide upon some other means of correction, be corrected", and had made the necessary changes in the Chinese, French, Russian and Spanish versions. In addition, in the French version, the infinitive, instead of the present participle, had been used for the verbs which began each of the sub-paragraphs 1 (a), 1 (b) and 1 (c).

23. In paragraph 1 (b), the word "separate" in the expression "separate instrument or instruments" had been deleted in all language versions; the adjective was unnecessary since the instrument or instruments in question must necessarily be separate from the treaty.

24. In article 74, paragraph 2, the Drafting Committee had noted that sub-paragraphs (a), (b) and (c),

as approved by the Committee of the Whole, were not on the same footing. Whereas sub-paragraph (a) could be read with the opening clause of paragraph 2, that did not apply to sub-paragraphs (b) and (c), which had to be read with sub-paragraph (a). The Drafting Committee had therefore incorporated the text of sub-paragraph (a) in the opening clause and had made consequential changes in the drafting of the other two sub-paragraphs.

25. The Drafting Committee had not made any change in the text of article 75.

Article 71²

Depositaries of treaties

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.

Article 71 was adopted by 105 votes to none.

Article 72³

Functions of depositaries

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

(a) Keeping custody of the original text of the treaty and of any full powers delivered to it;

(b) Preparing certified copies of the original text and preparing any further text of the treaty 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;

(c) Receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) Examining whether the signature or any instrument, notification or communication 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;

(e) Informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) Registering the treaty with the Secretariat of the United Nations;

(h) Performing the functions specified in other provisions of the present Convention.

² For the discussion of article 71 in the Committee of the Whole, see 77th, 78th, 82nd and 83rd meetings.

³ For the discussion of article 72 in the Committee of the Whole, see 77th, 78th and 82nd meetings.

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 international organization concerned.

Article 72 was adopted by 99 votes to none.

26. Mr. GONZALEZ GALVEZ (Mexico) said that he wished to reply to the statement made at the 102nd meeting of the Committee of the Whole⁴ by the representative of Guyana, who had referred to what he had called "the persistent refusal of the depositary" of the Treaty for the Prohibition of Nuclear Weapons in Latin America,⁵ also known as the Treaty of Tlatelolco, "to accept Guyana's signature to a treaty whose provisions clearly entitled it to participate in that treaty".

27. His Government had instructed him to place on record that Mexico, in its capacity as depositary of the Treaty of Tlatelolco, considered that it had faithfully carried out the provisions of that Treaty, more particularly so in the case of Guyana, bearing in mind especially that one of the signatory States had in due course notified the depositary of its objection to the signature of the Treaty by the Government of Guyana, which was not a signatory State; its objection was based on articles 25 and 28 of the Treaty itself. The Mexican Government had been obliged to consult all the other signatory States and had kept the Government of Guyana informed of the action it had taken. Some of the signatory States had not yet replied, however, despite repeated requests. It should also be pointed out that the replies so far received by the Mexican Government had revealed the existence of serious differences of opinion on the substance of the matter.

28. In the circumstances, the Mexican Government considered that the only correct procedure for a depositary Government was the one which it had itself followed and would continue to follow, in accordance with practice and more particularly in the light of article 72 of the convention on the law of treaties which the Conference had just adopted.

29. Mr. MAKAREWICZ (Poland) said that his delegation had voted in favour of articles 71 and 72 because it considered that those articles properly reflected the functions of the depositary in contemporary treaty relations. They took into account the new practice of designating more than one State as depositary. That practice, combined with acceptance of the "all States" formula, constituted an important step forward in overcoming the artificial obstacles in the way of the full application of the principle of universality in treaty relations. Articles 71 and 72 embodied proper safeguards for the impartial performance of the depositary's functions by confirming that the character of the rela-

tions between the depositary and the other States would not affect the obligation of a depositary to act impartially. That principle would make for smooth relations between the depositary and the other States and would be an important means of strengthening friendly inter-State relations.

30. It was his delegation's understanding that, where the object and purpose of the treaty were of interest to the international community of States as a whole, the expression "States entitled to become parties to the treaty", which was used in several places in article 72, was a reference to all States.

31. Mr. TEYMOUR (United Arab Republic) said that his delegation had voted in favour of article 72 on the understanding expressed by it during the discussion of the article at the 77th meeting of the Committee of the Whole. It must be clearly understood that paragraph 1 (d) was to be construed restrictively. That principle had been confirmed by the General Assembly in its resolution 598 (VI) which explained that the depositary, "in connexion with the deposit of documents containing reservations or objections", must carry out his functions "without passing upon the legal effect of such documents".

32. Mr. WERSHOF (Canada) said that he had voted for article 72 on the understanding that paragraph 1 (d) had the meaning attached to it in the explanation given by the Expert Consultant at the 78th meeting of the Committee of the Whole,⁶ an explanation which had been confirmed by the Legal Counsel, as representative of the Secretary-General, at the 83rd meeting.⁷ His delegation attached the greatest importance to those considered statements regarding the practice of the Secretary-General on the points covered by paragraph 1 (d) and the meaning of the provisions of that paragraph.

Article 73⁸

Notifications and communications

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 direct 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 when the latter State has been informed by the depositary in accordance with article 72, paragraph 1 (e).

Article 73 was adopted by 104 votes to none.

⁴ Para. 6.

⁵ For text, see *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 91, document A/C.1/946.

⁶ Para. 56.

⁷ Paras. 55 and 56.

⁸ For the discussion of articles 73 and 74 in the Committee of the Whole, see 78th and 82nd meetings.

*Article 74*⁸*Correction of errors in texts or in certified copies of treaties*

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, 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 an instrument or instruments setting out the correction which it has been agreed to make; or

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

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

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

(b) An objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

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

4. (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 execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 74 was adopted by 105 votes to none.

*Article 75*⁹*Registration and publication of treaties*

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 preceding paragraph.

Article 75 was adopted by 105 votes to none.

Proposed new article 76

33. Mr. RUEGGER (Switzerland) asked at what stage it would be appropriate for his delegation to introduce its proposal for the addition of a new article 76 (A/CONF.39/L.33).

⁹ For the discussion of article 75 in the Committee of the Whole, see 79th and 82nd meetings.

34. The PRESIDENT said that the Swiss delegation would be invited to introduce its proposal immediately before the Conference undertook the consideration of the final clauses.¹⁰

The meeting rose at 5.35 p.m.

¹⁰ For the discussion of this proposed new article, see 29th plenary meeting.

TWENTY-FIFTH PLENARY MEETING

Thursday, 15 May 1969, at 10.45 a.m.

President: Mr. AGO (Italy)

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)

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE (continued)

Statement by the Chairman of the Drafting Committee on articles 62 and 62 bis, annex I to the convention, and articles 63 and 64

1. Mr. YASSEEN, Chairman of the Drafting Committee, introduced the text submitted by the Drafting Committee for the articles in Part V, Section 4, and for annex I to the draft convention.

2. The International Law Commission had entitled article 62 "Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty". Some representatives had suggested that the expression "in cases of invalidity" might give the impression that article 62 would apply only to cases in which the invalidity had already been established. To remove any chance of misunderstanding, the Drafting Committee suggested the title: "Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty".

3. No change affecting all the language versions had been made to the text of article 62 itself, but the Drafting Committee considered it necessary to make the following point clear. Since denunciation was mentioned in certain articles in Part V, the Committee had considered whether it ought to be mentioned in article 62, paragraph 1. It had concluded that that was not essential, since it was quite clear from the Commission's text and commentary that paragraph 1 applied to all claims brought under the preceding articles in Part V.

4. Article 62 *bis* was a new provision, for which the Drafting Committee proposed the following title: "Procedures for conciliation and arbitration". In paragraph 1 of the text of article 62 *bis* approved by the Committee