

Document:-
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**Law of treaties - Draft article prepared by Dr. Yuen-li Liang at the request of Mr. J. L. Brierly,
Special Rapporteur - incorporated in footnote 3 to A/CN.4/SR.99**

Topic:
Law of Treaties

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envisage the necessity of continuing it during the session to be held in 1952.

16. The CHAIRMAN thought that the draft Convention could not be submitted to governments without the comments which clearly could not be ready before 1952.

17. In response to an observation by Mr. CORDOVA, Mr. SPIROPOULOS recalled that, at its second session, the Commission had tentatively adopted a draft Code of Offences against the Peace and Security of Mankind. After discussing the matter, it had decided not to submit that tentative draft to the General Assembly, in order to retain the possibility of altering it, if need be substantially. For the same reason, the draft Convention at present under consideration should not yet be submitted to the General Assembly. The Commission's authority must not be cheapened. It would be sufficient to inform the General Assembly that the Commission had tentatively adopted the substance of a number of articles, but without giving the text. In that way the Commission would remain free to change its mind.

18. The CHAIRMAN pointed out that members of the General Assembly who were curious to know the tentative decisions of the Commission would be able to consult the summary records of its meetings.

19. Mr. LIANG (Secretary to the Commission) recalled that in its report to the General Assembly on its second session, the Commission had reported on the progress made with each of the questions still on its programme. The report contained fairly detailed information on the question of arbitral procedure, but briefer information on the questions of the regime of the high seas and the law of treaties.

20. When the report had come before the General Assembly, the USSR delegation had requested the Sixth Committee not to discuss the substance of questions which the Commission was still engaged in studying. That wise proposal had met with the approval of a large number of representatives and had been adopted.²

21. From the Commission's point of view, it seemed that articles unaccompanied by comments would appear unscientific and might give rise to false interpretations. The work done to date on the draft Convention on the Law of Treaties was still fragmentary.

22. He therefore suggested that the Commission act as it had done the previous year and omit from its report on its third session the text of the articles that had been only tentatively adopted.

23. The CHAIRMAN asked whether that suggestion met with the general approval of the Commission.

It was so agreed.

(b) CONSIDERATION OF A DRAFT ARTICLE ON THE ACCEPTANCE OF TREATIES (A/CN.4/L.16)³

24. The CHAIRMAN recalled that, in article 2 of the draft Convention on the Law of Treaties as adopted

² *Official Records of the General Assembly Fifth Session, Sixth Committee*, 225th meeting, para. 53, and 245th meeting, para. 33 and 37-63.

³ Doc. A/CN.4/L.16 read as follows:

"Acceptance of treaties

at the 88th meeting (A/CN.4/L.5),⁴ the question of acceptance had been reserved. Article 2 read as follows: "A treaty becomes legally binding in relation to a State when that State undertakes a final obligation under the treaty whether by signature, ratification, accession or any other means of expressing the will of the State, in accordance with its constitutional law and practice through an organ competent for that purpose." It was the words "or any other means of expressing the will of the State" which related to acceptance.

25. In the draft article prepared by Mr. Liang at the request of the Special Rapporteur on the acceptance of treaties (A/CN.4/L.16), the words "in accordance with its constitutional law and practice" seemed to be unnecessary as they already appeared in article 2 which he had quoted, and enunciated a general principle governing the provisions which followed. The Commission had decided not to repeat them in connexion either with ratification (article 3) or with accession (article 8).

26. Replying to a question by Mr. SCALLE, the CHAIRMAN added that he would see no objection to including that explanation in the comment accompanying the draft Convention.

27. Mr. HUDSON wondered whether it was wise to give acceptance a place apart. He saw no difference, from the point of view of international law, between acceptance and ratification, which were two words for one and the same thing. Under international law there was no need whatsoever for ratification to be made in any one given way. Moreover, the Commission itself, in defining ratification (article 3 (1)), said that it was the act by which a State "confirms and accepts a treaty". It therefore used the word "accepts" in respect of ratification.

28. He was not unaware that at the request of certain countries, and in order to get round constitutional ratification procedure, in certain conventions setting up international agencies recourse had been had to acceptance as a means of bringing those conventions into force. But that means, which was practicable only for conventions setting up international agencies, had not been used, for example, in the conventions signed at Geneva in August 1949 or in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950.⁵

29. In his view, article 2 of the draft Convention (E/CN.4/L.5) was incorrectly headed "Application of treaties" and was purely tautological. All it amounted to was that a treaty became legally binding in relation to States which recognized its legally binding character. Article 7, "Entry into force of treaties", was sufficient and made it possible to delete article 2.

30. Mr. LIANG (Secretary to the Commission)³ denied trying to impose on the Commission an article embodying a new idea. As the Commission had previously been

⁴ "Where the treaty itself so provides, a State may, in lieu of signature or ratification or both, undertake a final obligation under the treaty, in accordance with its constitutional law and practice, by depositing an instrument of acceptance."

⁵ See summary record of the 88th meeting, footnote 15.

⁶ E/CN.4/554.