

Document:-
A/CN.4/L.5

Second report on the Law of Treaties - Text of articles tentatively adopted by the Commission at its 88th meeting, 24 May 1951 (on the basis of the redraft of articles suggested by the Special Rapporteur, A/CN.4/L.4) - incorporated in footnote 15 of A/CN.4/SR.88

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
1951, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

124. Mr. CORDOVA proposed that the text run on as follows: "by which a State which has not signed or ratified the treaty accepts . . .".

125. Mr. BRIERLY accepted that amendment.

Mr. Córdova's amendment was adopted.

126. Mr. SPIROPOULOS thought the words "duly executed" were unnecessary and should be deleted.

127. Mr. BRIERLY agreed.

Mr. Spiropoulos's amendment was adopted.

Paragraph (1) was adopted as amended.

Paragraphs (2) and (3) were adopted.

Mr. Hsu relinquished the chair to Mr. Brierly.

Programme of work

128. The CHAIRMAN proposed that at the next meeting the Commission begin discussion of the report by Mr. Spiropoulos CA/CN.4/44 on a draft code of offences against the peace and security of mankind (item 2 (a) of the agenda).

129. He enquired whether any member of the Commission was opposed to discussing a text which had so far appeared in English only.

130. Mr. CORDOVA doubted whether the text adopted on the question of treaties was substantial enough to be sent to governments or to the General Assembly. He thought it would be a good thing to continue discussion of Mr. Brierly's first report on the law of treaties in order to advance the study of a subject which was of immediate interest and concern to all.¹⁵

¹⁵ Discussion of the report of Mr. Brierly was resumed at the 98th meeting. The text of articles tentatively adopted by the Commission at its 88th meeting read as follows:

" Article 1

" The authentication of the text or texts of a treaty may be effected by:

" (a) The signature or initialling *ne varietur* on behalf of the States which have taken part in the negotiation of that treaty by their duly authorized representatives; or

" (b) Incorporation in the Final Act of the conference at which the treaty was negotiated; or

" (c) Incorporation in a resolution of an organ of an international organization in accordance with the constitutional practice of that organization; or

" (d) Other formal means prescribed by the treaty.

" Application of treaties

" Article 2

" 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.

" Ratification of treaties

" Article 3

" (1) Ratification is an act by which a State, finally and in a written instrument, confirms and accepts a treaty as binding on that State.

" (2) Ratification may be made subject to reservations or conditions in accordance with the provisions of Article 10. (This paragraph was deferred to await the advisory opinion of the International Court of Justice on the question of reservations.)

131. Mr. YEPES thought that the discussion on the draft relating to the law of treaties could not be closed. He had proposed a new article at the second session, which, it had been promised, would be included in the agenda for the third session and in the report¹⁶. He asked that that article be discussed at the next meeting. It ran as follows:

" In order to be valid, a treaty, as understood in this Convention, must have a lawful purpose according to international law. In case of any dispute regarding the lawfulness of a treaty, the International Court of Justice shall state its opinion on the matter at the request of any State directly or indirectly interested, or of the United Nations.

" A treaty with an unlawful object may not be registered with the Secretariat of the United Nations. Whenever the lawfulness of a treaty submitted for registration is in doubt, the Secretary-General of the United Nations shall ask the International Court of Justice for an advisory opinion."

" Article 4

" (1) A State is not deemed to have undertaken a final obligation under a treaty until it has ratified that treaty.

" (2) A State is, however, deemed to have undertaken a final obligation by its signature of the treaty if

" (a) The treaty so provides;

" (b) The treaty provides that it shall be ratified but that it shall come into force before ratification;

" (c) The form of the treaty or the attendant circumstances indicate an intention to dispense with ratification.

" Article 5

" The signature of a treaty on behalf of a State does not create for that State any obligation to ratify the treaty.

" Article 6

" The mere fact of its signature being duly appended, especially to a multilateral treaty, places the State under an obligation to take, within a reasonable time, such steps as are required to ensure that the treaty thus signed is subjected to the constitutional procedure for ratification or rejection.

" Entry into force of treaties

" Article 7

" Unless otherwise provided in the treaty itself,

" (a) A treaty not subject to ratification enters into force on signature of all States which have participated in the negotiations;

" (b) A treaty which provides for the exchange or deposit of ratifications enters into force on the exchange or deposit of ratifications by all the signatories;

" (c) A treaty which is subject to ratification but which contains no provision for exchange or deposit of ratifications enters into force when it is ratified by all the signatories and when each signatory has notified its ratification to all the other signatories.

" Accession to treaties

" Article 8

" (1) Accession to a treaty is an act by which a State which has not signed or ratified the treaty, formally and in accordance with its terms, accepts it, in a written instrument, as binding on that State.

" (2) A State may accede to a treaty only when that treaty contains provisions enabling it to do so or with the consent of all the parties to the treaty.

" (3) Unless otherwise provided in the treaty itself a State may only accede to a treaty after it has entered into force."

¹⁶ See summary records of the 78th meeting, para. 49c.