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Summary record of the 657th meeting

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
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92. The CHAIRMAN thanked the Observer for the Inter-American Juridical Committee for his impressive account of the Committee's activities. He assured him that the International Law Commission had greatly benefited from its co-operation with the Committee and fully expected that co-operation to continue; he asked him to convey to the Committee the Commission's gratitude for its continuing co-operation and for sending an observer to the session.

93. Mr. GOBBI, Observer for the Inter-American Juridical Committee, thanked the Chairman for his kind words and assured him that he would transmit his message to the Inter-American Juridical Committee.

94. The CHAIRMAN said that there remained to be dealt with under item 4 the report which he, as the Commission's observer, had submitted on the fifth session of the Asian-African Legal Consultative Committee (A/CN.4/146). He had been much impressed by the high level of the work done at that session and was glad to note the Commission's decision to continue co-operation with that Consultative Committee by sending an observer to the Committee's next session. If there were no comment, he would consider that the Commission agreed to take note of his report.

It was so agreed.

The meeting rose at 5.40 p.m.

657th MEETING

Tuesday, 5 June 1962, at 10 a.m.

Chairman: Mr. Radhabinod PAL

Law of treaties (A/CN.4/144 and Add.1) (item 1 of the agenda) *(continued)*

ARTICLE 20. — MODE AND DATE OF ENTRY INTO FORCE *(resumed from the previous meeting)*

1. The CHAIRMAN invited the Commission to resume its discussion of article 20.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that a general desire had been expressed for the simplification of the wording of the article. There was also general agreement on the elimination of the distinction between plurilateral and multilateral treaties, as with other articles. There remained the problem of the treaty practice of regional organizations, and he suggested that the Drafting Committee should be asked to find a formula to deal with that problem.

3. The provisions of paragraph 6, together with those of article 21, paragraph 2, would in all probability be transferred by the Drafting Committee to article 19 *bis*, which would contain all the provisions on the rights and obligations of states prior to the entry into force of the treaty.

4. Mr. JIMÉNEZ de ARÉCHAGA said that he was perfectly satisfied with the special rapporteur's suggestion that the Drafting Committee should formulate provisions to cover the question of regional treaties.

5. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to refer article 20 to the Drafting Committee, with the directions suggested by the special rapporteur, and to start to consider article 21.

It was so agreed.

ARTICLE 21. — LEGAL EFFECTS OF ENTRY INTO FORCE

6. Sir Humphrey WALDOCK, Special Rapporteur, said that the only question which arose in connexion with article 21 was whether it was necessary to include the provisions of paragraph 1 (*c*). Perhaps the Drafting Committee could be asked to consider whether those provisions should not be transferred to the article on ratification.

7. Mr. CASTRÉN said he wished to propose the following drafting amendments:

8. First, the deletion of paragraph 1 (*a*) as superfluous, and the consequential deletion of the word "accordingly" in the first line of paragraph 1 (*b*).

9. Secondly, the deletion of the word "full" in the first part of paragraph 2 (*a*); a treaty which entered into force provisionally could not be said to enter into "full" force.

10. Thirdly, the replacement in the last line of paragraph 2 (*a*) of the words "until the treaty enters into full force" by the words "until the treaty enters into final force".

11. The expression "is unreasonably delayed" in paragraph 2 (*b*) was far from clear, but it might not be possible to state the intention in more specific terms.

12. Mr. BRIGGS suggested that paragraph 1 (*b*), instead of referring to rights and obligations which "come into operation", should state that the treaty would "become effective". The final proviso could then be redrafted to state that the treaty would become effective or come into force, even if it specified that some rights and obligations would only come into operation at some future date.

13. There would then be a clear distinction between the date when a treaty as such became effective, and the time when its provisions came into operation. As Manley Hudson put it, "The date of an instrument coming into force is not necessarily the date when its substantive provisions become applicable: the latter will depend upon the terms of the obligation assumed".[1] A good example was provided by the Geneva Convention of 1929 on the treatment of prisoners of war[2] which had become effective on 19 July 1931, the date of its entry into force, though its provisions had only come into operation on the outbreak of hostilities.

14. Mr. JIMÉNEZ de ARÉCHAGA said he doubted the advisability of the rule proposed *de lege ferenda* in

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[1] *International Legislation*, Vol. I, Washington, 1931, Introduction, pp. LIV-LV.

[2] League of Nations *Treaty Series*, Vol. CXVIII.

paragraph 2 (*b*); it could have the effect of upsetting certain established treaty relations. Furthermore, it seemed more relevant to the termination of treaties than to the legal effects of entry into force.

15. Mr. TUNKIN also doubted the advisability of including the rule in paragraph 2 (*b*); it might be interpreted in such a manner as to allow a state to terminate the provisional application of a treaty, notwithstanding the provisions of the treaty itself, on the ground that, in that state's own view, there had been unreasonable delay in the entry into full force of the treaty.

16. Moreover, the question it dealt with was purely hypothetical. In practice, if a treaty provided for its provisional entry into force, it also normally laid down some time limit.

17. Sir Humphrey WALDOCK, Special Rapporteur, said that he was quite prepared to drop the provisions of article 2 (*b*), which he had only put forward tentatively. It was probable that, where two states agreed to the provisional entry into force of a treaty, they were in such a close relationship that no difficulties would arise. In fact, it sometimes occurred that a treaty remained in force provisionally throughout its life, the device of provisional entry into force being used merely because there was no expectation of Parliamentary approval for ratification within due time. In those cases, the treaty never enter formally into full force, because the objects of the treaty were achieved without the "provisional" character of the entry into force ever being terminated.

18. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to delete pragraph 2 (*b*) and to refer the remainder of article 21 to the Drafting Committee, with the comments made during the discussion; it could then consider article 22.

It was so agreed.

ARTICLE 22. — THE REGISTRATION AND PUBLICATION OF TREATIES

19. Sir Humphrey WALDOCK, Special Rapporteur, introducing article 22, said that the Commission had the choice between stating the existing United Nations law in the matter of registration and publication of treaties, and limiting the article to a mere reference to Article 102 of the United Nations Charter and to the regulations for the time being in force on the subject.

20. His draft of article 22 merely reproduced the essence of the General Assembly's Regulations for the registration and publication of treaties, contained in General Assembly resolution 97 (I) of 14 December 1946, as amended by resolution 482 (V) of 12 December 1950. However, a question of law arose in regard to new Members of the United Nations: were those new Members under an obligation to comply with the provisions of Article 102 of the Charter in respect of treaties entered into by them after the Charter had come into force but before they had become Members of the United Nations? That was what the General Assembly's Regulations appeared to lay down.

21. Mr. TUNKIN said he doubted the advisability of including paragraph 1, which would raise problems outside the scope of the draft articles. The Drafting Committee should be asked to replace it by a reference to the relevant provisions of the Charter. Paragraphs 1 and 2 could then be combined more or less along the following lines:

> "The registration of a treaty under Article 102 of the Charter of the United Nations shall not take place until the treaty has come into force between two or more of the parties thereto."

22. Mr. de LUNA commended the special rapporteur for not adopting the rule once proposed by Sir Hersch Lauterpacht,[3] which would have voided a treaty concluded by a Member of the United Nations if not registered with the United Nations within six months of its entry into force. It would be most undesirable to make a treaty even voidable once it had come into force.

23. From the point of view of drafting, he thought that both the sub-paragraphs of paragraph 4 were redundant in view of the provisions of the previous paragraphs.

24. Mr. CASTRÉN said it was undesirable to impose on non-member states of the United Nations the obligation to register with the United Nations Secretariat every treaty entered into by them after 24 October 1945.

25. He failed to see the purpose of the provisions of sub-paragraph 3 (*b*) (ii). How could a treaty which had already been registered with a specialized agency be registered by the agency?

26. Paragraph 3 (*c*) did not state where registration was to take place. It was probably intended that registration should be effected with the Secretariat of the United Nations or of a specialized agency, but it would be preferable to say so expressly.

27. Mr. ROSENNE suggested that the provisions of both article 22 and article 23 should be combined in one short article, which would refer to Article 102 of the Charter of the United Nations and to the Regulations giving effect thereto.

28. So far as the provisions on registration were concerned, the substantive contents of both articles should be transferred to the commentary. The provisions concerning publication embodied instructions which were primarily for the Secretariat of the United Nations and did not directly concern states.

29. As a matter of law, it was also desirable to include in the commentary a very short paragraph reserving the position arising out of article 18 of the Covenant of the League of Nations on the subject of the registration of treaties. Many treaties registered with the League of Nations were still in force.

30. Mr. BARTOŠ said that the article should incorporate most of the provisions of the General Assembly's Regulations on the registration and publication of treaties. Those provisions should appear in the

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[3] *Yearbook of the International Law Commission 1953*, Vol. II (United Nations publication, Sales No.: 59.V.4, Vol. II), p. 162, para. 5.

future convention on the law of treaties because there had been some controversy regarding the legal effect of the General Assembly's Regulations, which had been described sometimes as mere recommendations and sometimes as orders to the Secretariat. He regarded those Regulations as part of the internal law of the United Nations. Since there had been such controversy both in legal theory and in state practice, it was highly desirable to include the provisions in question in order to make them binding on states which would be bound by the future convention on the law of treaties.

31. He wished to draw attention to another legal problem relating to the effects of registration. The registration of a treaty could be said to have, with regard to states not parties to it, an effect similar to a notice in an Official Journal in municipal law. Of course, the substantive provisions of a treaty would only have effect as between the parties to it and not *erga omnes*; the registration and publication of a treaty by the United Nations Secretariat, however, made its existence known to all states, and third states should draw the necessary conclusions therefrom. The existence of a treaty, once it had been registered and published, could thus be invoked not only before United Nations organs but also, in his opinion, *vis-à-vis* third states, together with the known facts.

32. Mr. LACHS pointed out that, as indicated in paragraph 6, the Charter provisions on the subject of the registration of treaties were *lex imperfecta*.

33. The general rule of international law in the matter was that the obligation to register a treaty existed in two cases: first, where the treaty itself imposed that obligation upon the parties, and, secondly, where one of the parties had that obligation by virtue of an undertaking subscribed by it outside the terms of the treaty, for example, where the party was a Member of the United Nations and had that obligation by virtue of the Charter.

34. Both articles 22 and 23 should be shortened. Article 22 would state the existing rule of international law that he had just indicated.

35. He did not favour the incorporation in article 22 of the actual provisions of the General Assembly's Regulations, because that would involve the interpretation of those Regulations.

36. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with Mr. Bartoš that the General Assembly's Regulations constituted United Nations internal law. The Secretary-General was competent to register treaties in accordance with the United Nations Charter, and the General Assembly's Regulations were instructions to the Secretary-General in pursuance of the relevant Charter provisions.

37. It was for the Commission to decide whether in article 22 it wished to incorporate the provisions of the Regulations or merely to make a reference to them.

38. Another question of substance to be decided by the Commission was whether the operation of the provisions of Article 102 of the Charter should be extended to states which were not Members of the United Nations, but which would become parties to the future convention on the law of treaties. There appeared to be no obstacle to prevent those states from accepting such obligations, and the suggestion that they might do so would represent a modest contribution to the progressive development of international law, but one of real practical utility. Treaties formed such a large part of international law that the publication of their terms was vital. The registration system instituted by the League of Nations and the United Nations had had the great advantage of making treaty law available to all.

39. Mr. YASSEEN said it was not advisable to incorporate into the draft articles the actual provisions of the General Assembly's Regulations. To do so might have the effect of obstructing the future amendment of those provisions. In fact, the General Assembly had adopted those Regulations in pursuance of Article 102 of the Charter and the Assembly could amend them from time to time in the light of changing circumstances.

40. For those reasons, he favoured the suggestion that the provisions under discussion should be replaced by a reference to the relevant provisions of the Charter.

41. Mr. LACHS said that he fully agreed with the special rapporteur in his desire to make a contribution to the progressive development of international law in the matter. It was hoped by all that the United Nations would one day become universal but, for the time being, it was necessary to take into account certain political realities. Certain states were not properly represented in the United Nations, or were not admitted to the United Nations.

42. He supported the suggestion that the contents of both articles 22 and 23 should be transferred to the commentary and replaced in the body of the text by a reference to the relevant provisions of the Charter.

43. Mr. LIANG, Secretary to the Commission, said that, as had been pointed out by the special rapporteur, the General Assembly's Regulations were addressed primarily to the Secretariat; the Assembly had adopted them as instructions for carrying out the provisions of Article 102 of the Charter; those Regulations indicated to the Secretariat how it was to proceed with the process of registration. The Regulations were not in the nature of recommendations to states, although they had been approved by the Member States of the United Nations.

44. The question of incorporating those Regulations in the text of a future convention on the law of treaties raised certain complex problems. The first was of a technical character; it was an extremely delicate process to reproduce, in a treaty, provisions which were already in force under another instrument. The main question was whether the provisions in question would be reproduced in their entirety or only in their essential parts. At its second session, in 1950, the Commission had had before it the question of formulating a Draft Code of Offences against the Peace and Security of Mankind in which it had considered incorporating certain portions of the Genocide Convention of 1948. The problem had been found practically insoluble. The only safe course

would have been to reproduce the whole of the Genocide Convention. The incorporation of certain passages and the omission of others, however minor, would have weakened the force of the code and would have given rise to grave problems of interpretation.

45. Another problem was that of the possibility that the General Assembly might revise its Regulations, as it was always at liberty to do. If, however, the future convention on the law of treaties incorporated the Regulations as they stood, it would be necessary for the parties to that convention to resort to the elaborate process of revision whenever the General Assembly amended the Regulations.

46. On the whole, he considered that it was not advisable to incorporate the General Assembly's Regulations in the draft articles.

47. Mr. VERDROSS suggested the deletion of the last clause in paragraph 1, " if such registration and publication has not already been effected ". It was difficult to reconcile that clause with the preceding clause which stated that every treaty should be registered and published " as soon as possible ".

48. Sir Humphrey WALDOCK, Special Rapporteur, said that the clause in question would cover the case of a state which became a Member of the United Nations and had already previously registered certain treaties with the United Nations Secretariat. Some non-member states, such as Switzerland, had made a practice of registering their treaties with the United Nations Secretariat.

49. He noted that there was a general feeling in the Commission that article 22 should not set out in detail the contents of the Regulations but should merely refer to Article 102 of the Charter and the General Assembly's Regulations.

50. The possibility of amendment of the Regulations, to which the Secretary to the Commission had drawn attention, could be covered by referring to " the regulations for the time being in force ".

51. He would like to know whether the Commission desired to limit registration strictly to States Members of the United Nations.

52. Mr. de LUNA said he noted that Mr. Lachs agreed that a non-member state could, under the terms of the treaty, undertake the obligation to register it with the United Nations Secretariat. There should therefore be no obstacle in the way of a non-member state assuming such an obligation in more general terms by virtue of the future convention on the law of treaties. Any state not wishing to assume such an obligation could make a reservation to the relevant article of the future convention: he recalled in that connexion his own liberal approach to the right to make reservations.

53. He had been impressed by the remarks of Mr. Bartoš on the subject of the effects of the publication of a treaty with respect to states not signatories to it, namely, that such a publication established the existence of the treaty *erga omnes*, although the substantive clauses of the treaty were binding only upon the parties thereto.

54. Mr. JIMÉNEZ de ARÉCHAGA said he supported the suggested simplification of articles 22 and 23, the main provisions of which could be reduced to a reference to the relevant provisions of the United Nations Charter and any Regulations issued in pursuance of those provisions.

55. That simplification would not preclude the adoption of a provision extending the United Nations process of registration to non-member states which were prepared to accept the obligation to register treaties with the United Nations Secretariat.

56. Sir Humphrey WALDOCK, Special Rapporteur, said he accepted the suggestion of Mr. de Luna and Mr. Jiménez de Aréchaga for the extension of the registration process to non-member states which were prepared to accept the obligation to register treaties with the United Nations Secretariat.

57. Mr. BARTOŠ urged the Commission to make a contribution, albeit a modest one, towards the development of international law in the matter. The Commission would be making such a contribution by reflecting in the draft articles the existing practice: it was very common for States non-members of the United Nations to stipulate in the treaties entered into by them that those treaties would be registered with the United Nations Secretariat, and the Secretary-General had extended his willing co-operation in the matter. Since that result could be achieved by means of a provision in the treaty itself, there was no reason why it should not be attained also by means of a general convention on the law of treaties.

58. The CHAIRMAN said that, if there were no objection, he would consider that the Commission adopted the suggestion put forward by Mr. de Luna and agreed to refer article 22 to the Drafting Committee, with the comments made during the discussion.

It was so agreed.

ARTICLE 23. — PROCEDURE OF REGISTRATION AND PUBLICATION

59. The CHAIRMAN suggested that article 23, which depended on article 22, should also be referred to the Drafting Committee with the comments made during the discussion.

It was so agreed.

ARTICLE 24. — THE CORRECTION OF ERRORS IN THE TEXTS OF TREATIES FOR WHICH THERE IS NO DEPOSITARY

60. Sir Humphrey WALDOCK, Special Rapporteur, introducing article 24, said that the reports of his predecessors had not dealt with the question of the correction of the text of treaties and that there was no reference to the subject either in the Harvard Research Draft or in Satow's " Diplomatic Practice ". He had therefore been rather at a loss for information on corrections and, as explained in his commentary, had based his draft on what he had found in Hackworth's " Digest of International Law " and the " Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements " (ST/LEG/7). He would

therefore welcome any additional information from members of the Commission who were legal advisers to their governments.

61. Mr. BRIGGS, referring to paragraph 2, said it was not strictly accurate to speak of "two or more" texts of a treaty. He hoped the Drafting Committee would bear that comment in mind.

62. Mr. TUNKIN said that, although the list of the forms of correction contained in paragraph 1 as drafted by the special rapporteur seemed almost exhaustive, he could cite an additional example, that of an exchange of notes between the parties drawing attention to the error. Other members might think of other examples; the text should, therefore, be made more flexible.

63. Sir Humphrey WALDOCK, Special Rapporteur, agreeing with Mr. Tunkin, suggested the insertion of the words "unless the parties otherwise agree", so that the enumeration should not be interpreted as exhaustive.

64. Mr. LACHS said that the special rapporteur had done very useful work in drafting the clauses on correction of errors. With regard to paragraph 1, there might be errors other than typographical errors or omissions. It had happened, for example, that negotiators had inadvertently used the wrong words, as in the drafting of the Warsaw Convention of 1929,[4] where the word "*transporteur*" had been confused with "*expéditeur*"; the parties had agreed that the latter word was correct. When that Convention had entered into force, all the parties had been obliged to ratify the correction, but the United States Senate had qualified it as a reservation and ratified it as such. It should therefore be made quite clear that a correction was in fact a correction, as distinct from an amendment or a reservation.

65. Mr. BARTOŠ said he agreed with Mr. Lachs that not only typographical errors or omissions but even substantive errors sometimes occurred in treaties. For example, during the negotiations between France and Yugoslavia preceding the agreement of 2 August 1958 on the settlement of pre-war debts,[5] both francs and dollars had been mentioned but in drafting the agreement thousands of dollars had been referred to when francs had been meant. The error had passed unnoticed and both countries had ratified the agreement. The Yugoslav authorities had later notified the French negotiators of the error, and it had been agreed that it was an error. The agreement had, however, required a renewal of the ratifications, since a matter of substance had been involved. A similar case had occurred in connexion with the Agreement concerning minor frontier traffic between Yugoslavia and Italy, of 3 February 1949,[6] where, in an annex to the agreement, a list of the communes excluded from that traffic had erroneously been substituted for a list of those between which traffic was allowed; although that error had been purely technical, the results had exceeded the scope of typographical errors or omissions. Where a negative was omitted, that might be regarded as a technical error, but had the effect of completely altering the obligation.

66. He would agree with the special rapporteur's draft in so far as it related to cases where the treaty had not yet been ratified; if, however, the treaty had already been ratified, the same procedure should be used for corrections as for acceptance or ratification. Such simple procedures as initialling, or even an exchange of notes, would not suffice, in view of the increase or diminution of the contractual obligations involved.

67. Mr. GROS said he agreed that paragraph 1 should not be limited to typographical errors or omissions. There were frontier treaties in which the wrong elevations had been referred to in the text through errors in map reading. In those cases, however, the simple procedure of an exchange of notes, relating to the correction only, had proved sufficient.

68. On the point raised by Mr. Bartoš, he (Mr. Gros) considered that it was for the states concerned to decide whether the change in obligations was so substantial as to necessitate a rectifying act of the same legal force as the original consent, or whether a simpler procedure, an exchange of notes or a *procès verbal*, would suffice. In any case, he doubted whether that point had any place in the article; it might be dealt with in the commentary.

69. Mr. YASSEEN said it should be possible to distinguish between various kinds of error. Purely technical errors could be corrected by very simple procedures. Sometimes, in domestic law, errors which were self-evident did not require any special procedure. For example, the French railway law of 11 November 1917 contained an article presumably intended to make it an offence to enter or leave a train until it had come to a complete stop. But the drafting of the article, No. 78, was so slipshod that, on a literal interpretation, passengers were permitted to enter or leave a train only while it was in motion. Despite that, the French court of appeal had found no difficulty in interpreting and applying the intention of the law.[7] The correction of typographical errors or omissions in treaties should also be made as simple as possible.

70. Mr. JIMÉNEZ de ARÉCHAGA noted that some members had suggested that the scope of the article should be broadened so as to provide for the correction not only of typographical errors or omissions but also of errors of substance. The Commission should, however, be careful not to consider, in the context of the article under discussion, the kind of error which vitiated consent. Such a material error could invalidate the treaty or give rise to the right of correction. For example, the descriptions of rivers in frontier treaties had in practice given rise to considerable difficulties and even to arbitration. The provision as drafted by the special rapporteur

[4] Convention for the Unification of Certain Rules regarding International Air Transport, Warsaw, 12 October 1929, League of Nations *Treaty Series*, Vol. CXXXVII.

[5] *Journal officiel de la République française*, 23 May 1959, p. 5244.

[6] United Nations *Treaty Series*, Vol. 33, p. 142.

[7] Dalloz, *Jurisprudence générale*, 1930. Part I, p. 101 (Crim. 8 mars 1930).

could give rise to misunderstandings; a state party to a frontier treaty in which a river was incorrectly described might claim under the special rapporteur's article that it was not bound by that clause of the treaty. The phrase "the signatory states shall by mutual agreement correct the error" in paragraph 1 caused that problem, and it should be made clear that agreement that the error had in fact occurred should be a prerequisite of correction.

71. The CHAIRMAN said it would appear that the same method of correction should not be used for both purely clerical errors and for substantive errors.

72. Mr. ROSENNE suggested that the point raised by Mr. Jiménez de Aréchaga might be dealt with by the Drafting Committee, which could perhaps use different terms to describe different kinds of error, for instance, "mistake" for errors of substance.

73. With regard to Mr. Yasseen's point, the fundamental difference between domestic law and the international treaties with which the Commission was dealing was the absence, in the latter case, of a normal system of adjudication; there was no procedure in international law parallel to the methods used by courts to deal with manifest errors in domestic legislation.

74. He supported Mr. Tunkin's view that the rule for corrections should be made more flexible.

75. Sir Humphrey WALDOCK, Special Rapporteur, said it was important to distinguish between correction of errors and amendment of the text. In speaking of substantive errors, members came close to the subject of the amendment of the text, and in such cases much depended on whether or not the parties agreed that an error had in fact occurred. It was when that point was contested that difficulties arose. In the case of typographical errors and omissions, there was usually no doubt, but the situation where there was some misuse of words in the texts in different languages was much more delicate and verged on the subject of amendment. The Commission should proceed very cautiously in extending the scope of paragraph 1.

76. Mr. PAREDES said that the procedure for correcting typographical errors or omissions should be different from the procedure for correcting substantive errors which might be due to misunderstandings of certain expressions or facts. Article 24 as drafted seemed to fit the case of purely technical errors, but could be amplified to deal more fully with substantive errors which altered the relationship between the parties and might jeopardise the very existence of the treaty.

77. It should be made absolutely clear that the technical errors referred to in paragraph 1 were merely errors arising out of the misuse of certain terms. If, however, such errors led to a misinterpretation of the facts, a complete revision of the text should be undertaken, in order to establish the obligations of the parties with entire accuracy. If the parties agreed that a substantive error had occurred, they could draft a new treaty, but if there was any controversy on the subject, the matter should be decided by the International Court of Justice.

78. Mr. GROS said that, if the special rapporteur intended to cover purely technical errors only, that intention should be made perfectly clear in the text. Apart from such technical errors, there were also substantive errors on the existence of which the parties were agreed and which, in practice, they often corrected by simple procedures. He doubted, therefore, whether a draft such as the one before the Commission should deal only with technical errors. If the words suggested by the special rapporteur, "unless the parties otherwise agree", were inserted, the parties would be given the possibility not only of using methods other than those enumerated in paragraph 1, but also, if errors which were not purely technical occurred, of proceeding by one of those other methods. In any case, the Commission should make itself quite clear on that point and he personally was in favour of a provision covering the correction of substantive errors as well.

79. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with Mr. Gros, provided it was made clear that the parties were in agreement on the existence of an error.

80. Mr. LACHS said that the point raised by Mr. Gros appeared already to be taken into account in paragraph 1, since the agreement of the parties that an error had occurred was a prerequisite of the whole procedure of correction. Moreover, such agreement could cover the correction of all types of error.

81. Mr. TUNKIN said he agreed that the wording of paragraph 1 could cover all kinds of error and that the reference to mutual agreement provided the necessary safeguard of consent among the parties that an error had in fact occurred. He therefore agreed that the scope of the paragraph could be extended, by a reference to mutual agreement, to errors other than purely technical ones.

82. With regard to the point raised by Mr. Bartoš concerning the procedure to be followed in the case of a treaty which had already been ratified, he doubted the advisability of obliging states to follow the normal procedure of concluding treaties in the event of errors. The question was surely one which came within the constitutional law of the state concerned; the rule of international law should be that states themselves could choose the procedure for correcting errors in treaties, and if the constitutional law of a state required ratification in such cases, that state would be free to ratify the correction. To make such ratification mandatory, however, would unnecessarily complicate the procedure of correction.

83. Mr. BARTOŠ said that his point could not be dismissed so lightly. If it was agreed that it was by ratification that a state assumed a binding obligation, what was the situation of that obligation if the final text of a treaty had been ratified and was then changed substantively through an error in that text? In the case of binding obligations, where the actual content of the obligations was at issue, the question could not be regarded as merely procedural, and the simple procedures suggested might not suffice. After ratification had taken place, any changes affecting the substance of an obligation, even if they were due to errors, should be

made by the same procedure as that followed when the original obligation had been assumed.

84. Mr. LACHS said that he knew of cases in which corrections to treaties had been included in the instruments of ratification.

85. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with the views expressed by Mr. Tunkin and Mr. Lachs. He had studied the question in Hackworth's 'Digest of International Law' with particular reference to the United States, where ratification raised conspicuous problems, and had found that, in United States practice, corrections were not always referred back to the Senate. It therefore seemed clear that it was for states to decide on the procedure for themselves, and that the point should not be covered in the text of the article itself.

86. The CHAIRMAN suggested that article 24 should be referred to the Drafting Committee for redrafting in the light of the comments made during the debate.

It was so agreed.

ARTICLE 25. — THE CORRECTION OF ERRORS IN THE TEXTS OF TREATIES FOR WHICH THERE IS A DEPOSITARY

87. Sir Humphrey WALDOCK, Special Rapporteur, said that in the main the provisions contained in article 25 followed the practice of the Secretary-General of the United Nations.

88. Mr. de LUNA considered that the same rules could apply both to technical errors and to defects of concordance.

89. He noted that no procedure was suggested in paragraph 4 for dealing with objections to the proposed corrections of a text, except in cases when the treaty was drawn up within an international organization or by a conference convened by one. That omission should be made good.

90. Sir Humphrey WALDOCK, Special Rapporteur, said that he would need time to reflect on Mr. de Luna's first suggestion. Errors arising from lack of concordance were particularly frequent and when they came before the courts were apt to involve points of substance. If the parties agreed on the existence of such errors, the procedure for correction should be that laid down for technical errors.

91. He accepted Mr. de Luna's second suggestion.

92. Mr. ROSENNE said that it might be necessary to distinguish between faulty concordance of the language versions actually negotiated and lack of concordance of the translated versions, which was more likely to be due to inadvertence.

93. Mr. BARTOŠ, commending the special rapporteur on the new text he had prepared, which reflected United Nations practice, pointed out that authentic texts in other languages were not regarded as translations. Some rule was necessary to govern corrections of concordance in the different languages, which were very frequently needed. He recalled that the problem of the correction of the Chinese text of the Convention on the Prevention and Punishment of the Crime of Genocide, mentioned in the commentary, had been handled more as a political than as a legal matter.

94. Mr. VERDROSS said that the problem of technical errors, on the existence of which the parties could presumably easily reach agreement, was quite different from that created by lack of concordance of the text of a treaty in another language. Such lack of concordance could have been to some extent deliberate and might give rise to difficulties of interpretation. The problem of the interpretation of the text of a treaty drawn up in several languages was an entirely different problem from that of the correction of errors in the text.

95. Sir Humphrey WALDOCK, Special Rapporteur, said that the lack of concordance between texts in several languages was a serious problem, often involving questions of interpretation.

96. The CHAIRMAN suggested that article 25 should be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.

ARTICLE 26. — THE DEPOSITARY OF PLURILATERAL OR MULTILATERAL TREATIES

97. Sir Humphrey WALDOCK, Special Rapporteur, said that not much information was available on the subject dealt with in article 26, but he had tried to set out what he believed to be the general practice. He was uncertain whether the presumption he had made in paragraph 2 (*b*) was justified for plurilateral treaties and would welcome guidance on that point.

98. Mr. VERDROSS said that paragraph 1 should not be expressed in its present mandatory form since no such rule as was there enunciated existed, though it was a fact that the depositary of a plurilateral or multilateral treaty was normally the state or international organization in whose archives the original texts had to be deposited. But according to international law, the contracting parties were free to choose whatever depositary they wished.

99. Mr. ROSENNE said he felt that the article should not be confined to multilateral treaties, however restricted, as suggested by the title; bilateral treaties too could be deposited with the Secretary-General.

100. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne's suggestion was acceptable, the more so as it would dispense with the classification of treaties.

101. Mr. LACHS said he agreed with Mr. Verdross. A better balance would be achieved between paragraphs 1 and 2 if the former were redrafted to deal with the case where a depositary was designated.

102. In addition to treaties in simplified form, such as an exchange of notes between three or four states, there were a number of other treaties of a restricted type for which no depositary was designated and the texts of which remained in the archives of the parties.

103. Mr. BARTOŠ said that no provision was made in either article 26 or article 27 to cover the case where a depositary decided after a certain time to relinquish

his functions. That could happen when, because circumstances had changed, a depositary state wished to dissociate itself from a particular treaty. In that event the rule laid down in paragraph 3 should apply.

104. Another point which should be considered, though he was not certain whether it should be regulated in the draft, was the case where a depositary ceased to exist but the treaty obligations remained in force between the parties. For example, after the Little Entente had ceased to exist, certain regional obligations of a technical, not a political, character had not been repudiated by the signatories. Similarly, there was the question who, since the Belgrade Convention on the Danube of 1948, was the depositary for agreements concluded under the auspices of the former International Danube Commission. It was very dangerous to consider that treaties had lost all legal force because the depositary had gone out of existence. In his view, treaties survived the disappearance of the depositary.

105. Mr. LIANG, Secretary to the Commission, referring to paragraph 2 (*a*), said it would be desirable to make it clear that it was the Secretariat of an international organization which would serve as depositary. As far as the United Nations was concerned, the depositary was the Secretary-General or the Secretariat, not the organization. In the case of other international organizations it was also the secretariat of an organization that was designated as the depositary. His contention was borne out by article 22, on the registration of treaties, which specified in paragraph 1 that, where appropriate, treaties should be registered with the Secretariat of the United Nations, and by article 32 of the Convention on the High Seas, 1958, which required the instruments of ratification to be deposited with the Secretary-General.

106. Sir Humphrey WALDOCK, Special Rapporteur, said that, while appreciating the Secretary's argument, he believed it would be unwise to follow his suggestion because it was for the international organization itself to determine which of its organs should be a depositary. The provision should not be drafted in such a form as to be applicable only to the United Nations.

107. Mr. LACHS said that, in his opinion, the points raised by Mr. Bartoš, which concerned the termination or succession of treaties, should be dealt with elsewhere. Article 26 related to the initial stages of a treaty's existence.

108. Mr. TUNKIN said that both articles 26 and 27, which were inter-related, would need very careful discussion because of the need to check the dangerous abuse of the functions of a depositary, of which there had been many instances in recent years. Depositaries had been known to refuse, for reasons of foreign policy, to accept instruments of ratification properly executed; in so doing they had violated the provisions of the treaty whereby it was open to all states. He reserved the right to comment at greater length on the articles at a later stage.

109. With regard to article 26, he agreed with Mr. Verdross that the formulation to the effect that the depositary should normally be the state or international organization in whose archives the original texts had to be deposited was inadequate, because that would mean that someone else could be a depositary, which was not the case.

110. The points raised by Mr. Bartoš, on which he had no comments to offer for the time being, concerned also other elements of the law of treaties, such as succession.

111. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee might be asked to amend paragraph 1 so as to take into account the point made by Mr. Verdross. He did not believe, however, that he had greatly offended in that regard, for the reference to an express provision in the treaty indicated that the negotiating states were entirely free to make what provision they wished concerning the depositary.

112. To take into account the first comment of Mr. Bartoš, paragraph 3 might be amended to provide for the case where a depositary ceased to act in that capacity, but he would be reluctant to enter into the difficult problem of the succession of states in that context.

113. He noted that no view had been expressed on the question whether it would be useful and justified to make the presumption that, if the treaty was silent, the "host" state should be responsible for notifying the receipt of instruments of ratification and other instruments relating to the treaty.

114. Mr. de LUNA said that the article might be redrafted so as to begin with the general proposition that the designation of a depositary was settled by the parties, and then to follow with residual rules for cases where no provision for a depositary had been made in the treaty.

115. Satisfaction would be given both to the Secretary and to the special rapporteur if the words "the appropriate organ of" were inserted before the words "the said organization" in paragraph 2 (*a*).

116. Mr. ROSENNE suggested that paragraph 1 was unnecessary, in view of the definition of "depositary" given in article 1 (*m*).

117. The Secretary's point could be met by the addition of the words "or organ of the international organization" at the end of paragraph 2.

118. Mr. JIMÉNEZ de ARÉCHAGA said he favoured the presumption contained in paragraph 2 (*b*), which would serve a useful purpose.

119. Perhaps an exception should be made for agreements in the form of an exchange of notes, which appeared not to require a depositary even when they had more than two parties.

120. The CHAIRMAN suggested that the article should be referred to the Drafting Committee for redrafting in the light of the discussion.

It was so agreed.

The meeting rose at 12.55 p.m.