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Summary record of the 667th meeting

Topic:
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exclude others from the circle of those eligible to participate in treaties.

The meeting rose at 1.5 p.m.

667th MEETING

Monday, 25 June 1962, at 3 p.m.

Chairman: Mr. Radhabinod PAL

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

DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE (*continued*)

ARTICLE 7.—PARTICIPATION IN A TREATY (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the Drafting Committee's redraft of article 7.

2. Mr. Elias had also submitted a redraft of the article, which read:

"1. In the case of a general multilateral treaty, participation shall be open to every sovereign state.

"2. In all other cases, participation shall be open to every state:

"(*a*) which took part in the adoption of the text of the treaty, or

"(*b*) to which the treaty is expressly made open by its terms, or

"(*c*) which was invited to attend the conference at which the treaty was drawn up, unless a contrary intention appears from the treaty itself or from the circumstances of the negotiations."

3. Mr. BRIGGS said that article 7 was much less important than article 7 *bis* concerning the opening of a treaty to the participation of additional states. Article 7, paragraph 1, contained an axiomatic statement, and paragraph 2 was unlikely to assume much significance. A great deal of the discussion at the previous meeting had been hardly relevant and he very much regretted the references to the cold war: the Commission was not the proper forum for that.

4. The special rapporteur, on the other hand, had clearly expounded the international law on the subject of participation in treaties, and he wholly endorsed his views.

5. There was no rule of international law which permitted every state to become a party to any treaty: indeed, the reverse was true. States could only become parties to a treaty on the terms laid down in the instrument itself or with the consent of the other parties. There was thus no justification for the assertion that certain states had been excluded from general multilateral treaties. The entities excluded from the Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations were not generally regarded as states, in particular by the United Nations. To his knowledge, the only instance of the exclusion of states from a general multilateral treaty as defined in article 1 of the draft had been the Soviet Union Government's veto of the admission of Austria, Italy and Japan to participation in the Charter of the United Nations.

6. He could not support the proposition that there was a unilateral right either to exclude states from participation or to demand participation in a treaty. He was therefore unable to accept paragraph 1 of Mr. Elias's proposal.

7. Mr. CADIEUX said that he would have to oppose Mr. Elias's proposed redraft. First, it impinged upon the complex problem of recognition, with all its political implications. Not only had that problem not been studied by the Commission, but he was uncertain whether such a study would confirm the conclusion reached in Mr. Elias's proposal.

8. If, instead of endorsing the practice of the majority of the States Members of the United Nations, the Commission allowed itself to be guided by other than purely technical considerations and, under the influence of political preconceptions, accepted the innovation proposed by Mr. Elias, advantage would be taken of that fact by states which opposed United Nations practice, and the Commission's prestige would suffer. The proposal also posed special difficulties for those members who were also legal advisers to their governments, for if they supported the proposal their attitude might be interpreted as committing their governments to a certain view concerning the problem of recognition. A legal adviser could hardly dissociate himself from his government's official policy.

9. On technical grounds, the proposal was wholly unacceptable, because it was at variance with the basic principle of the law of treaties, which was respect for the will of the parties. It was inconceivable that states which, as part of their general policy, did not recognize certain entities, would, for the purposes of certain treaties, allow them to become parties. If the Commission wished to codify rules of international law, it must recognize the practice of the majority, and if it wished to contribute to the progressive development of international law, it was unlikely to achieve that object by telling governments what policy they should follow.

10. His conclusion, therefore, was that Mr. Elias's proposal was inopportune for material reasons, unjustified for technical reasons, and objectionable for practical reasons: he would vote against it.

11. Mr. YASSEEN urged the Commission to keep the question in proper perspective. It was engaged in formulating not a general but a residuary rule. The express provisions of a treaty, either opening it to participation by certain states or excluding certain others, had to be respected. The only question was how a treaty's silence on the subject of participation should be interpreted. In his own opinion, it was legitimate to presume that the silence of a general multilateral treaty dealing with questions of common concern or codifying general rules of international law should be construed to mean that the treaty was open to all sovereign states.

Such a presumption was not arbitrary but flowed naturally from the character of the treaty itself. Admittedly a different practice existed at the moment, but it could not provide the basis for a residuary rule.

12. Mr. de LUNA proposed the addition of a new paragraph 3 at the end of article 7 to read: "In the case of a general multilateral treaty, it is open to any state to become a party thereto, unless the treaty provides otherwise".

13. His amendment took account of the principle defended by certain members, with which he agreed, that in view of the character of general multilateral treaties it was illogical to interpret the silence of such a treaty on the question of participation as meaning that the treaty was closed. In other words, he proposed a residuary rule the reverse of that upheld by the Permanent Court of International Justice in its judgment of 25 May 1926 in the case concerning certain German interests in Polish Upper Silesia,[1] but had added the proviso that the treaty could provide otherwise.

14. As an international lawyer, he considered that the political attitude of states to the complex problem of recognition was not always consistent, and that sometimes political considerations overrode legal ones. It was contrary to the laws of logic to presume, in the event of the treaty's silence, that a general multilateral treaty was closed. His compromise solution was based on the special nature of general multilateral treaties, and also sought to respect the principle of unanimity. That his amendment involved no innovation was proved by the provisions of article 19 of the Havana Convention on Treaties of 1928[2] and of article 7 in Professor Lauterpacht's two drafts of 1953 and 1954.

15. Mr. BARTOŠ said he could not agree with the proposition that the silence of a general multilateral treaty on the subject of participation should be interpreted to mean that the treaty was closed to additional states. In modern times, the reverse was likely to be true, though he would not go so far as to assert that all general multilateral treaties were open. Regrettably, as Mr. Tunkin had indicated at the previous meeting, some states had been excluded from participating in certain treaties of that kind, even though concerned with rules which should be applied by the whole international community, such as the Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations. Such exclusions could lead to the violation of rules which were intended to be universal. He therefore urged that the Commission should, in the interests of the progressive development of international law, establish in its draft the presumption that general multilateral treaties were open if they contained no express provision to the contrary.

16. He was not opposed to the underlying idea of paragraph 1 of Mr. Elias's proposal, but felt that its scope should be restricted so as to correspond with reality. States could not be denied the right to choose their partners in treaty relations, but they could be expected to indicate in advance an intention to exclude certain others from participating in any treaty they were drawing up. He accordingly supported Mr. de Luna's amendment.

17. Mr. AGO said that it was essential to recognize the fundamental principle of the freedom of the parties to choose with what states they would enter into treaty relationship. He realized, of course, that general multilateral treaties posed a very special problem.

18. Mr. Elias's proposal, however, did much more than state a presumption with regard to that category of treaties; it put forward a mandatory rule, of a kind practically unknown to international law and wholly unjustified, under which the parties would not even be able to restrict participation in a treaty by express provision in the instrument itself.

19. Mr. Yasseen's approach was more reasonable in that he had suggested that the residuary rule should be that the silence of a general multilateral treaty meant that it was open to the participation of other states. He (Mr. Ago) would even have some hesitation in subscribing to that line of argument, though willing to support an affirmation to the effect that such a presumption was desirable. The reason why he was apprehensive of any automatic residuary rule was that it might have dangerous consequences. For example, was there good ground for supposing that a state, or states, deliberately not invited to the conference at which the treaty was drawn up, had an automatic right to participate later? Such a rule might lead to most undesirable disputes if certain entities, which not all states recognized as sovereign, expressed a desire to participate and claimed a right to do so on the basis of such a rule. Again, it was questionable whether such a rule could confer a right of participation on a state against which sanctions were being applied by the United Nations.

20. Mr. AMADO said that the general multilateral treaties described by some members of the Commission were more in the nature of international legislation than treaties. They perhaps conformed to an ideal which all truly international jurists had in mind, but if participants were not free to choose their partners, they could no longer be strictly regarded as treaties. Consequently he had serious misgivings about the argument that silence should be interpreted in favour of a treaty being open to all states, and he intended to oppose any extreme solution which he felt sure would not find favour among Member States of the United Nations.

21. Mr. TUNKIN said that Mr. Cadieux and Mr. Ago had introduced some quite extraneous considerations, such as the question of recognition, which had nothing whatsoever to do with participation in a treaty. Some of the parties to practically every recent general multilateral treaty did not recognize each other or had strained relations with one another, yet that did not prevent them from participating in the same treaty. In modern times, international personality did not depend upon recognition.

22. In answer to the argument that states could not be forced to enter into treaty relations against their will,

[1] P.C.I.J., Series A — No. 7, p. 28.

[2] Hudson, *International Legislation*. Vol. IV (1931), p. 2378.

he could only say that they were free to stay outside the treaty. The principle of the freedom of the parties should not be pushed to the extent of excluding *jus cogens* from the far-reaching field of the law of treaties. After all, rules of *jus cogens* clearly existed; for example, the conclusion of aggressive pacts was manifestly inadmissible under international law.

23. The nature of the treaty was, in fact, the most vital consideration in determining participation. Some matters were of interest to the whole international community, and he had been surprised to hear Mr. Bartoš suggest that certain states could be excluded from participating in treaties designed to deal with problems of common concern. The principle of peaceful co-existence, irrespective of political, social or economic systems, imposed certain obligations on states and, among them, the duty to collaborate to some extent. That being so, by what right had one group of states excluded others from participating in a convention on the high seas, in violation of one of the fundamental principles of international law?

24. Paragraph 1 of Mr. Elias's proposal was juridically absolutely correct, and in conformity with existing international law.

25. He appreciated Mr. de Luna's attempt to find a compromise solution, but considered that his proposal was not very logical and did not go far enough.

26. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had considered article 7 *bis*, but had been unable to proceed with the drafting because its content was bound to be affected by the discussion on article 7. Of particular importance was the impact of Mr. Elias's proposal on paragraph 2 of article 7 *bis*.

27. It had been argued that it was reasonable to infer from the fact that a state had been invited to attend a conference that it could become a party to the resulting treaty unless the contrary was stated at the Conference. Mr. Ago had pointed out, however, that in the case of general multilateral treaties, drafted at conferences convened by world-wide organizations, the fact of invitation did not carry the same implication.

28. Mr. Tunkin had said that *jus cogens* in the matter overrode the express will of states; he (the special rapporteur) would submit, however, that in the case of such general multilateral treaties as the Conventions on the Law of the Sea and the Convention on Diplomatic Relations, it was not merely a question of the will of the states concerned, but of the will of the General Assembly, to which, under the modern treaty practice, was entrusted the power to issue the invitations to accede to the treaty. Mr. Elias's proposal would have the effect of taking the matter out of the hands of the General Assembly. He believed that that would be an unwise step on the part of the Commission, and, moreover, he doubted whether it was appropriate for the Commission to advance such a proposal in the face of the existing treaty practice. In his opinion, the will of states must be taken into account.

29. With regard to Mr. Yasseen's view that, in the case of a treaty's silence on the subject of participation it might be presumed that the treaty was open to all states, he pointed out that two cases might arise: either invitations to attend the negotiating conference would be issued to all states, or else certain states would be excluded. In the latter case, Mr. Yasseen's presumption would go against a clear indication given in the invitations to the negotiating conference. In the case of multilateral treaties of general interest, invitations were usually sent automatically to almost all states, and the ommission of a state had a certain significance.

30. Furthermore, although Mr. Tunkin's assertion that the question of recognition did not arise might be upheld theoretically, he could not agree that the same applied in practice. The difficult position of a depositary in cases where a state which was not on the list of any of the world-wide organizations attempted to deposit an instrument of accession or acceptance should also be borne in mind. While he more or less shared Mr. Tunkin's views on the place of recognition in international law, he could not agree that recognition was irrelevant in the context of an invitation to participate in a treaty. He accordingly felt that the Commission should not take a step which was at variance with existing practice.

31. Mr. TSURUOKA said he agreed with Mr. Briggs, Mr. Cadieux, Mr. Ago and Mr. Amado that it was an important principle of international law that states should be free to choose their partners in treaty relations. That was one of the principles which distinguished international from municipal law, for the latter was binding on all subjects of the state concerned.

32. He could not share Mr. Yasseen's view on the presumption that a general multilateral treaty was open to all states if the treaty was silent on the matter. The silence of the treaty could have great significance, particularly in existing international practice, whereby conventions at international conferences were usually adopted by a two-thirds majority. The effect of Mr. Yasseen's presumption would be to impose the minority opinion on the majority.

33. Mr. LACHS said that, in defining general multilateral treaties, as it had done in article 1, the Commission committed itself to a general application of international law, since the relevant definition spoke of treaties dealing with matters of general interest to all states. It was accordingly difficult to reconcile the imposition of such binding rules on all states with the possibility of debarring certain states from participation in the treaty.

34. While he agreed with Mr. Ago that states could not be forced into treaty relations with each other, it seemed impossible to exclude any state from treaties of a general character which laid down rules which were meant to be universal. The idea of universality was the logical consequence of the definition of general multilateral treaties; the contrary view entailed a risk of slipping into a kind of pluralism, in which states would be divided into specific groups and the generally binding principles of international law would not be recognized.

35. Moreover, in performing its task of codifying international law, the Commission should bear in mind its

duty to ensure the progressive development of the rules of law in accordance with certain principles. That was one of the most important elements of the Commission's work. The right to legislate could not be the privilege of the members of a private club; it belonged to all states. Recognition or non-recognition of one state by another had little bearing on the question; certain States Members of the United Nations had no diplomatic relations with each other, yet they had all subscribed to the Charter.

36. The Commission should take a broader view of article 7, in conformity with the general principles of international law, which clearly made it necessary to accord special treatment to general multilateral treaties.

37. Mr. BARTOŠ said that, since it could not yet be said that international legislation as such existed, an element of state sovereignty should be retained in the draft concerning treaty relations. Treaties were still being made in the form of contracts, and hence it was only logical that there should be no obligation for any state to enter into treaty relations with all states. From the practical point of view, moreover, the provisions of a treaty depended on the circle of states concluding the instrument.

38. The super-state was not yet a reality of international law, and although no state ought to be able to claim greater sovereignty than others, although the universality of the treaty ought to be observed in all cases, and although the General Assembly was competent to warn states against the consequences of non-observance of the principle of universality, it could not be said that such universality was a feature of modern international life. That was a point that should be taken into account in the drafting of a text which was designed to be accepted by as many states as possible.

39. Mr. ELIAS said he had not expected his proposal to be discussed within the context of the cold war and with the political overtones which had been introduced into the debate. The object of his proposal was to make it clear that the considerations guiding the Commission should not be based only on the rules advocated by the long-established states, since the overwhelming majority of States Members of the United Nations would be prepared to accept more progressive rules. He quite agreed with Mr. Tunkin and Mr. Lachs that the argument of recognition was beside the point. The Commission's task should not be conceived as a duty either to codify rules laid down in the eighteenth and nineteenth centuries, or to sweep away important rules of international law; its task was to ascertain whether or not the older rules had any direct relevance to modern international life and to modify them where necessary. The Commission should be bold enough to advance proposals for the progressive development of international law. Consequently, when the choice lay between the principle of the "open door" and that of the "closed shop", it seemed obvious that the former was the progressive principle and that, far from violating any fundamental principle of law, it clearly reflected the modern international situation. He was sure that most of the Asian and African states would support that view in the General Assembly.

40. As a compromise solution, he proposed that the words "unless the treaty otherwise provides" should be added at the end of paragraph 1 of his draft.

41. Mr. AGO pointed out that the Drafting Committee had followed the Commission's instructions in preparing its text, and that the Commission's present difficulties arose from the fact that a completely new alternative had now been proposed.

42. Apart from the problems he had already mentioned, a much more serious problem might arise if the rule proposed by Mr. Elias were extended to the multilateral treaties concluded under the auspices of many international organizations. Under the constitution of the ILO, for instance, participation in its conventions was confined to members of the organization. The reason for that rule was that the ILO exercised a certain supervision over the operation of the conventions and that supervision could only be exercised over Member States. An analogous rule applied in the case of instruments concluded under the auspices of certain other specialized agencies. If those instruments were opened to all states which were not members of the organization, the whole system of supervision would be destroyed. The overwhelming majority of general multilateral treaties were concluded under the auspices of international organizations, and their internal rules should therefore be taken into account. Accordingly, the universality rule which was being advocated was not only revolutionary, but would make it practically impossible for certain international organizations to operate effectively.

43. Mr. TUNKIN said he could assure Mr. Ago that the situation in the event of the acceptance of Mr. Elias's modified proposal would not be as sombre as he seemed to think. The practice of states in the matter had for years been to regard multilateral treaties of general interest as being open to all states, for example, the Hague Conventions of 1899 and 1907 and all Red Cross Conventions, and there was therefore nothing revolutionary about the proposal. Furthermore, if a state entitled to participate in a general multilateral convention under that rule committed a serious violation of international law, it could hardly be said that to debar it from participation in such a general treaty as, for example, the Geneva Convention on the High Seas would constitute a correspondingly serious sanction. Mr. Elias's amended proposal went much less far than his original text and, in fact, constituted a compromise similar to that proposed by Mr. de Luna.

44. Mr. GROS said he wished to clarify a purely juridical aspect of the question, which was the true function of the Commission, without regard to any other kind of consideration.

45. The practice on which the special rapporteur had based his draft did not date back to the eighteenth or nineteenth century, as Mr. Elias had averred; it was the practice that the General Assembly had adopted in 1958 and 1960, in the case of the Geneva Conferences on the Law of the Sea, and in 1961 in the case of the Vienna

Convention on Diplomatic Relations. Under that practice, the rule was that general multilateral treaties were open to the states expressly named therein; there was no residuary rule that in principle such treaties were open to all states. The reason was that there was not just one category of general multilateral conventions; there were several. The present difficulty had arisen because the distinction drawn in the special rapporteur's original draft between multilateral and plurilateral treaties had been dropped.

46. Nor was there any support for such a rule in opinions of the International Court of Justice. In its advisory opinion on reservations to the Genocide Convention, the Court had stated specifically that its opinion was based on the special character and single purpose of that Convention, thus implying that there were other types of general multilateral treaties. If the Commission wished to be both logical and progressive, it should not only contemplate a clause opening every general multilateral treaty to all states, but also adopt a provision enabling all states to participate in the negotiation of such treaties. To maintain that there was no relation between recognition and the subject was to ignore an essential element of the problem. In his opinion, the rules stated in the Drafting Committee's text were both equitable and progressive, since they took into account both current United Nations practice and the existence of several categories of multilateral general treaty which could not all be brought under one and the same régime.

47. Mr. YASSEEN said he did not believe that there was any rule of international law against the opening of general multilateral treaties to participation by all states. On the contrary, the parties to such a treaty always had to agree on rules opening such a treaty to participation by certain states only; that implied a deliberate act by the states concerned and their awareness of the absence of any rule against participation by all states in cases where the treaty itself was silent on the matter. The fact that efforts were made to avoid such silence seemed to prove that, in the case of treaties of general interest, the residuary rule was that they should be open to all states.

48. Mr. VERDROSS suggested that Mr. Elias's modified proposal could be accepted if the treaties to which Mr. Ago had referred were excluded. In that case, only treaties enunciating universal rules of international law would be open to all nations.

49. Mr. de LUNA withdrew his proposal, which, he said, was covered by Mr. Elias's modified proposal.

50. Mr. AGO asked what would happen if the treaty was silent on the subject of participation, but the constitution of the international organization concerned, or the rules in force in it, contained specific provisions in that regard.

51. The CHAIRMAN appealed to members not to raise substantive matters at that late stage of the Commission's proceedings. He put Mr. Elias's proposal, as amended, to the vote.

Mr. Elias's amended proposal was adopted by 10 votes to 7, with 3 abstentions.

Article 7 was adopted.

52. Mr. GROS asked that it should be noted in the commentary that the members who had voted against Mr. Elias's proposal had done so because they thought it quite inapplicable to current international practice.

It was so agreed.

53. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the terms of article 7 *bis* would now have to be reviewed in the light of the Commission's decision concerning article 7.

54. The CHAIRMAN said that, to allow time for such review, the Commission would next consider articles 18 *bis*, 18 *ter* and 19.

ARTICLE 18 *bis*. — THE EFFECT OF RESERVATIONS

55. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee submitted the following redraft of article 18 *bis*, the title of which was now changed from "The validity of reservations" to "The effect of reservations":

"1. (*a*) A reservation expressly or impliedly permitted by the terms of the treaty does not require any further acceptance.

"(*b*) Where the treaty is silent in regard to the making of reservations, the provisions of paragraphs 2 to 4 of this article shall apply.

"2. Except in cases falling under paragraphs 3 and 4 and unless the treaty otherwise provides,

"(*a*) acceptance by any state to which it is open to become a party to the treaty constitutes the reserving state a party to the treaty in relation to such state, as soon as the treaty is in force;

"(*b*) an objection to a reservation by a state which considers it to be incompatible with the object and purpose of the treaty precludes the entry into force of the treaty as between the objecting and the reserving state, unless a contrary intention shall have been expressed by the objecting state.

"3. Except in a case falling under paragraph 4, the effect of a reservation to a treaty which has been concluded between a small group of states shall be conditional upon its acceptance by all the states concerned, unless

"(*a*) the treaty otherwise provides, or

"(*b*) the group is an international organization which applies a different rule to treaties concluded under its auspices.

"4. Where the treaty is the constituent instrument of an international organization and objection has been taken to a reservation, the effect of the reservation shall be determined by decision of the competent organ of the organization in question, unless the treaty otherwise provides."

56. The main difficulty in drafting the article had been to bring its provisions into line with the principle laid down in article 17, paragraph 1, that a reservation could be formulated if compatible with the object and purpose of the treaty.

57. So far as the effect of reservations was concerned, the ultimate criterion, in the absence of an adjudicating body, was the consent or objection of other states.

58. Mr. AMADO, criticizing the French wording of paragraph 1 (*b*), said it was not appropriate to say that a treaty was silent "*sur la question des réserves*"; the English wording, "silent in regard to the making of reservations", was more appropriate.

59. Mr. CASTRÉN suggested that the somewhat unsatisfactory opening of paragraph 3 (*b*) should be amended to read: "the states are members of an international organization which applies...".

60. Mr. BRIGGS said that he could accept in principle paragraphs 3 and 4 but would have to vote against the article as a whole because paragraph 2 (*a*) did not accurately reflect the relevant rules of international law.

61. Paragraph 2 (*a*) endeavoured to extend to all treaties a United Nations practice which applied only to certain multilateral treaties. Under that paragraph, states would be given a unilateral right to participate in treaties and an unlimited right to formulate reservations. It reflected the reactionary view that a state had a unilateral right to choose the law by which it would be bound. The only limitations to its freedom of action provided in paragraph 2 (*a*) were, first, that at least one other state must accept the reservation and, secondly, that an objection by another state precluded the entry into force of the treaty as between the objecting and the reserving state. However, the reserving state could still pose as a party to a treaty while releasing itself from the general rule of law.

62. Mr. TSURUOKA said that he supported the views expressed by Mr. Briggs.

63. Mr. GROS said that he too was in full agreement with Mr. Briggs.

64. Sir Humphrey WALDOCK, Special Rapporteur, said that the dissenting view of Mr. Briggs, Mr. Tsuruoka and Mr. Gros would find expression in the commentary to the article.

65. Mr. ROSENNE proposed that in the English text of paragraph 2 (*a*) the words "of a reservation" should be added after the word "acceptance".

66. He welcomed the inclusion in paragraph 2 (*b*) of a reference to the compatibility test in connexion with the objection to a reservation.

67. He asked what was the meaning of the words in paragraph 1 (*a*) "a reservation expressly or impliedly permitted by the terms of the treaty", having regard to the terms of article 17.

68. Sir Humphrey WALDOCK, Special Rapporteur, said that the words quoted by Mr. Rosenne were meant to cover the cases mentioned in article 17, especially in paragraphs 1 (*a*) and (*c*) of that article.

69. He accepted the drafting changes suggested by Mr. Amado, Mr. Castrén and Mr. Rosenne.

70. The CHAIRMAN said that, if there were no objection, he would consider that the Commission adopted article 18 *bis* with the drafting changes accepted by the special rapporteur.

It was so agreed.

ARTICLE 18 *ter*. — THE LEGAL EFFECT OF RESERVATIONS

71. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee submitted the following modified draft of article 18 *ter* which had already been approved by the Commission:[3]

"1. A reservation established in accordance with the provisions of article 18 *bis* operates:

"(*a*) to modify for the reserving state the provisions of the treaty to which the reservation relates to the extent of the reservation; and

"(*b*) reciprocally to entitle any other state party to the treaty to claim the same modification of the provisions of the treaty in its relations with the reserving state.

"2. A reservation operates only in the relations between the other parties to the treaty which have accepted the reservation and the reserving state; it does not affect in any way the rights or obligations of the other parties to the treaty *inter se*."

72. The title, "The legal effect of reservations", would now have to be amended because of its similarity to the title of article 18 *bis*, "The effect of reservations".

Article 18 ter *was adopted.*

ARTICLE 19. — THE WITHDRAWAL OF RESERVATIONS

73. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee submitted the following modified draft of article 19 which had already been approved by the Commission:[4]

"1. A reservation may be withdrawn at any time and the consent of a state which has accepted the reservation is not required for its withdrawal. Such withdrawal takes effect when notice of it has been received by the other states concerned.

"2. Upon withdrawal of a reservation the provisions of article 18 *ter* cease to apply."

74. The Drafting Committee had taken into account a request by Mr. Bartoš[5] that the article should state precisely when the legal effect of a withdrawal of a reservation began to operate.

75. Mr. BARTOŠ said he was satisfied with the second sentence now added to paragraph 1.

Article 19 was adopted.

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[3] 664th meeting, para. 66.

[4] *ibid.*, para. 71.

[5] 664th meeting, para. 68.

DRAFT REPORT OF THE COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION

CHAPTER II: LAW OF TREATIES

(A/CN.4/L.101/Add.1)

Introduction

76. The CHAIRMAN invited the Commission to consider paragraph by paragraph the introduction to chapter II of the Commission's draft report (A/CN.4/L.101/Add.1).

Paragraph 1 was adopted.

Paragraph 2 was adopted.

77. Mr. BRIGGS suggested that paragraph 3 should include an extract from the advisory opinion of the International Court of Justice on reservations to the Genocide Convention.

It was so agreed.

Paragraph 3 as amended was adopted.

Paragraph 4 was adopted.

Paragraph 5 was adopted.

78. Mr. CASTRÉN said that, in view of the Commission's decision to formulate the draft articles in the form of a convention, it was undesirable to elaborate on the arguments in favour of a "code", as was done in paragraph 6.

79. Mr. TUNKIN agreed with Mr. Castrén and felt that a wrong impression could be given by that paragraph.

80. Sir Humphrey WALDOCK, Special Rapporteur, said that although he felt the Commission had been right in deciding in favour of a convention rather than a code, he considered that the arguments in favour of a code should be set out in the introduction in order to give a more balanced picture.

81. Mr. CASTRÉN and Mr. TUNKIN said they did not wish to press the point.

Paragraph 6 was adopted.

Paragraph 7 was adopted.

Paragraph 8 was adopted.

Paragraph 9 was adopted.

82. Mr. CADIEUX said the statement in paragraph 10 that articles 26 and 27 were "to be regarded as provisional in character" struck him as unsatisfactory. At that stage the whole set of articles was provisional.

83. He suggested that the passage in question should be amended to state that articles 26 and 27 would be re-examined by the Commission.

It was so agreed.

Paragraph 10 as thus amended was adopted.

84. Mr. CADIEUX suggested that the expression "international organizations" in paragraph 11 should be made more precise by introducing the adjective "inter-governmental".

85. Mr. TUNKIN supported that suggestion.

86. Mr. AGO said that the expression "treaties of international organizations" was unsatisfactory; "treaties to which international organizations are parties" would be an improvement.

87. Mr. EL-ERIAN supported Mr. Ago's suggestion.

88. He also supported Mr. Cadieux's suggestion, which was in line with the terminology used by the General Assembly itself in its resolution 1289 (XIII) of 5 December 1958.

89. Lastly, he suggested that the phrase "international organizations possess the capacity to enter into international agreements" should be qualified by the addition of the words: "as a general rule". The Commission had in the past found that the treaty-making power of certain international intergovernmental organizations was clear, while that of others was not.

90. Sir Humphrey WALDOCK said he could accept the drafting changes proposed by Mr. Cadieux and Mr. Ago.

91. To meet Mr. El-Erian's point, he suggested that the passage in question should be amended to read: "international organizations may possess a certain capacity to enter into international agreements".

92. The CHAIRMAN said that, if there were no objection, he would consider the Commission agreed to accept paragraph 11 with the drafting amendments accepted by the special rapporteur.

Paragraph 11 as thus amended was adopted.

93. Mr. TUNKIN, criticizing the second sentence of paragraph 12, said the Commission had not sought to "codify the modern practice of states in treaty-making"; it had sought to codify the rules of international law in force on the subject.

94. The remainder of the second sentence, as also the third and fourth sentences, was unnecessary.

95. Mr. AMADO said that the statements contained in the third and fourth sentences of paragraph 12, while true, were not essential.

96. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, to meet the objections of Mr. Tunkin and Mr. Amado, paragraph 12, as from the second sentence, should be redrafted along the following lines:

"In preparing the draft articles, the Commission has sought to codify the rules of international law concerning the conclusion of treaties. At the same time, these draft articles contain elements of progressive development, as well as of codification of the law."

Paragraph 12 as thus amended was adopted.

The meeting rose at 6.5 p.m.

668th MEETING

Tuesday, 26 June 1962, at 9.30 a.m.

Chairman: Mr. Radhabinod PAL

Law of treaties (A/CN.4/144 and Add.1) (item 1 of the agenda) *(resumed from the previous meeting)*

DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

(resumed from the previous meeting)